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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, Msgr. Clement J. Connolly, Holy Family Church, South Pasadena, CA.

PRAYER

The guest Chaplain, Msgr. Clement J. Connolly, offered the following prayer:

Ever present living God, here words are spoken, decisions are made that shape the lives and times of generations. We are entrusted with the sacred stewardship of legislating decisions for life and death. Not merely the quality of life is ours to measure, but even the length of life, and for a multitude. Once within our time and hearing a prophetic voice proclaimed Your gospel values in ''a dream'': peace, dignity, equality, community. Was it just a dream or the groaning of a great prayer asking for an Amen?

When we yearn for peace,

When power becomes powerless,

When riches and poverty meet,

When the one language of love unites us,

When the courage of our belief is unfettered from special interests,

When we see ourselves in the face of the other, the lion and the lamb lay down.

Your word is revealed. You, Creator God, are present.

Divine Wisdom, abide here so that every word spoken and every vote cast may be a prayer. The cause and the purpose may always give life, dignity, freedom, honor . . . above and beyond personal or factional preference.

Thus so we pray, One Nation Under God, in the Name of that infinite God, Mystery, Many Faces, Father, Mother, Sister, Brother, Allah, Yahweh, Jesus Christ. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. BENNETT. Mr. President, on behalf of the majority leader, I announce the schedule for the day. This morning, there will be a period of morning business for up to 2 hours. The first 60 minutes will be under the control of Senator ALEXANDER and Senator MURKOWSKI, and the final 60 minutes will be under the control of the Democratic leader or his designee.

Upon the conclusion of morning business, the Senate will resume the consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit Court. Also, today the Senate will recess from the hours of 12:30 to 2:15 for the weekly party caucuses.

As a reminder, Senators who desire to speak on the nomination are asked to do so during today's session.

I yield the floor.

Mr. REID. While the acting majority leader is in the Chamber, I say through him to the majority leader that I certainly am appreciative of—and I think I speak for the entire Senate—his setting aside time for Senators to give their maiden speeches. Some may think this is a waste of time. From personal experience, when I gave my first speech on the Senate floor, presiding was David Pryor, and listening in his office was CHUCK GRASSLEY. My speech was on the Taxpayers' Bill of Rights, which I worked on my entire time in the House of Representatives. The subcommittee chairman did not like the legislation and would not do anything on it. To make a long story short, Senator Pryor sent me a note and said he liked my speech and liked the legislation I was talking about. Senator GRASSLEY also contacted me that day. They were both senior members of the Finance Committee, and as a result of their support I was able to get that legislation passed, which was landmark legislation, putting the taxpayer on a more equal footing with the tax collector.

I say to Senator ALEXANDER and others who will give their maiden speeches: People listen. These speeches really are meaningful.

I look forward to Senator ALEXANDER's speech. In fact, I will be joining with him in the legislation he is going to introduce.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for up to 2 hours. Under the previous order, the first 30 minutes is under the control of the Senator from Tennessee, Mr. ALEXANDER.

The majority leader is recognized.

MAIDEN SPEECHES

Mr. FRIST. Mr. President, first of all, I thank the new Senators who are here. I heard my distinguished colleague from Nevada talk a little bit about what we are about to embark upon. It is a rich tradition of this body. In the last few years, we have gotten away from having what we call a ''maiden speech.'' It is not the first time we have heard from our freshmen

Senators on both sides of the aisle, but it does give Members an opportunity to focus, as we just heard, on issues that are important to individual Senators but also are important to the American people in the broadest sense.

In this body, because we are always on a particular piece of legislation or in Executive Session, this gives us an opportunity to pause for a moment and shine that spotlight and that focus on an initial speech or discussion.

I am delighted we are reaching to the past—not the distant past—to something we have gotten away from in the last several Congresses, and as an initiative by our new Senators are embarking upon what I know will be a great and very meaningful and powerful experience for all of us.

The PRESIDENT pro tempore. The Chair, in my capacity as the Senator from Alaska, asks the floor staff to notify me when such speeches are to be made of any Senator.

Mr. REID. Mr. President, while the majority leader is in the Chamber, I ask unanimous consent that the majority be given a full hour—we have taken some time today—and the Democrats, if necessary, extended 10 minutes also. I ask unanimous consent.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The Chair recognizes the Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I first thank the majority leader for his comments and his friendship and his encouragement of the new Senators in these first addresses. I thank the Senator from Nevada for his encouragement and his willingness to join me in cosponsoring the legislation that I hope to talk about. I thank my colleagues for taking the time to be here today.

From the Senate's earliest days, new Members have observed, as we just heard, the ritual of remaining silent for a period of time, ranging from several weeks to 2 years. By waiting a respectful amount of time before giving their so-called ''maiden speeches,'' freshmen Senators hoped their senior colleagues would respect them for their humility.

This information comes from our Senate historian, Richard Baker, who told me that in 1906 the former Governor of Wisconsin—I am sensitive to this as a former Governor—Robert La Follette, arrived here, in Mr. Baker's words, ''anything but humble.'' He waited just 3 months, a brief period by the standards of those days, before launching his first major address. He then spoke for 8 hours over 3 days and his remarks in the CONGRESSIONAL RECORD consumed 148 pages. As he began to speak, most of the Senators present in the Chamber rose from their desks and departed. La Follette's wife, observing from the gallery, wrote:

> There was no mistaking that this was a polite form of hazing.

From our first day here, as the majority leader said, we new Members of the 108th Congress have been encouraged to speak up, and most of us have. But, with the encouragement of the majority leader and the assistant minority leader, several of us intend also to try to revive the tradition of the maiden address by a signature speech on an issue that is important both to the country and to each of us. I thank my colleagues who are here, and I assure all of you that I will not do what the former Governor of Wisconsin did and speak for 3 days.

THE AMERICAN HISTORY AND CIVICS EDUCATION ACT

Mr. ALEXANDER. Mr. President, I rise today to address the intersection of two urgent concerns that will determine our country's future, and these are also the two topics I care about the most, the education of our children and the principles that unite us as Americans. It is time we put the teaching of American history and civics back in its rightful place in our schools so our children can grow up learning what it means to be an American. Especially during such serious times when our values and ways of life are being attacked, we need to understand just what those values are.

In this, most Americans would agree. For example, in Thanksgiving remarks in 2001, President Bush praised our Nation's response to September 11. ''I call it,'' he said, ''the American character.'' At about the same time, speaking at Harvard, former Vice President Al Gore said, ''We should fight for the values that bind us together as a country.''

Both men were invoking a creed of ideas and values in which most Americans believe. ''It has been our fate as a nation,'' the historian Richard Hofstadter wrote, ''not to have ideologies but to be one.'' This value-based identity has inspired both patriotism and division at home as well as emulation and hatred abroad. For terrorists, as well as those who admire America, at issue is the United States itself—not what we do but who we are.

Yet our children do not know what makes America exceptional. National exams show that three-quarters of the Nation's 4th, 8th, and 12th graders are not proficient in civics knowledge and one-third do not even have basic knowledge, making them ''civic illiterates.''

Children are not learning about American history and civics because they are not being taught them. American history has been watered down, and civics is too often dropped from the curriculum entirely.

Until the 1960s, civics education, which teaches the duties of citizenship, was a regular part of the high school curriculum. But today's college graduates probably have less civic knowledge than high school graduates of 50 years ago. Reforms, so-called, in the 1960s and 1970s, resulted in widespread elimination of required classes and curriculum in civics education. Today, more than half the States have no requirement for students to take a course—even for one semester—in American government.

To help put the teaching of American history and civics in its rightful place, today I introduce legislation on behalf of myself and cosponsors, Senator REID of Nevada, Senator GREGG, Senator SANTORUM, Senator INHOFE, and Senator NICKLES. We call it the American History and Civics Education Act. The purpose of the act is to create presidential academies for teachers of American history and civics, and congressional academies for students of American history and civics. These residential academies would operate for 2 weeks, in the case of teachers, and 4 weeks in the case of students, during the summertime. Their purpose would be to inspire better teaching and more learning of the key events, the key persons, and the key ideas that shape the institutions and democratic heritage of the United States.

I had some experience with such residential summer academies when I was Governor of Tennessee. It was a good experience. In 1984, we began creating governor's schools for students and for teachers. We had a Governor's School for the Arts. We had a Governor's School for International Studies at the University of Memphis, a Governor's School for Teachers of Writing at the University of Tennessee at Knoxville, which was very successful. Eventually there were eight governor's schools in our State, and they helped thousands of Tennessee teachers improve their skills and inspired outstanding students in the same way. When those teachers and students went back to their own schools during the regular school year, their enthusiasm for teaching and learning the subject they had been a part of in the summer infected their peers and improved education across the board. Dollar for dollar, I believe the governor's schools in our State were the most effective popular education initiatives in our State's history.

We weren't the only State to try it; many did. The first State governor's school I heard about was in North Carolina, started by Terry Sanford when he was Governor in 1963, and then other States have done the same—Georgia, South Carolina, Arkansas, Kentucky, and Tennessee. In 1973, Pennsylvania established the Governor's Schools of Excellence, with 14 different programs of study. Mississippi has done the same. Virginia's Governor's School is a summer residential program for 7,500 of the Commonwealth's most gifted students. Mississippi and West Virginia also have similar programs. They are just a few of the more than 100 governor's schools in 28 States. Clearly, the model has proved to be a good one.

The legislation I propose today applies that successful model to American history and civics by establishing

presidential and congressional academies for students and teachers of those subjects.

The legislation would do one more thing. It would authorize the creation of a national alliance of American history and civics teachers to be connected by the Internet. The alliance would facilitate sharing of best practices in the teaching of American history and civics. It is modeled after an alliance I helped the National Geographic Society start in the 1980s. Their purpose was to help put geography back into the school curriculum.

This legislation creates a pilot program, up to 12 presidential academies for teachers, 12 congressional academies for students, sponsored by educational institutions. The National Endowment for the Humanities would reward 2-year renewable grants to those institutions after a peer review process. Each grant would be subject to rigorous review after 3 years to determine whether the overall program should continue or expand or be stopped. The legislation authorizes $25 million annually for the 4-year pilot program.

There is a broad new basis of support for and interest in American history and civics in our country. As David Gordon noted in a recent issue of the Harvard Education Letter:

> A 1998 survey by the nonpartisan research organization Public Agenda showed that 84 percent of parents with school age children say they believe the United States is a special country and they want our schools to convey that belief to our children by teaching about its heroes and its traditions. Similar numbers identified the American ideal as including equal opportunity, individual freedom, and tolerance and respect for others. Those findings were consistent across racial and ethnic groups.

Our national leadership has responded to this renewed interest. In 2000, at the initiative of my distinguished colleague Senator BYRD, Congress created grants for schools that teach American history as a separate subject within the school curriculum. We appropriated $100 million for those grants in the recent omnibus appropriations bill, and rightfully so. They encourage schools and teachers to focus on the teaching of traditional American history and provide important financial support.

Then, last September, with historian David McCullough at his side, President Bush announced a new initiative to encourage the teaching of American history and civics. He established the ''We The People'' program at the National Endowment for the Humanities, which will develop curricula and sponsor lectures on American history and civics. He announced the ''Our Documents'' project, run by the National Archives. This will take 100 of America's most prominent and important documents from the National Archives to classrooms everywhere in the country. This year, the President will convene a White House forum on American history, civics, and service. There we can discuss new policies to improve the teaching and learning of those subjects.

This proposed legislation takes the next step by training teachers and encouraging outstanding students. I am pleased today that one of the leading Members of the House of Representatives, ROGER WICKER of Mississippi, along with a number of his colleagues, is introducing the same legislation in the House of Representatives. I thank Senator GREGG, the chairman of the Committee on Health, Education, Labor, and Pensions, for being here and also for agreeing that the committee will hold hearings on this legislation so we can determine how it might supplement and work with the legislation enacted last year in this Congress and the President's various initiatives.

In 1988, I was at a meeting of educators in Rochester when the President of Notre Dame University asked this question: ''What is the rationale for the public school?'' There was an unexpected silence around the room until Al Shanker, the president of the American Federation of Teachers, answered in this way: ''The public school was created to teach immigrant children the three R's and what it means to be an American with the hope that they would then go home and teach their parents.''

From the founding of America, we have always understood how important it is for citizens to understand the principles that unite us as a country. Other countries are united by their ethnicity. If you move to Japan, you can't become Japanese. Americans, on the other hand, are united by a few principles in which we believe. To become an American citizen, you subscribe to those principles. If there are no agreement on those principles, Samuel Huntington has noted, we would be the United Nations instead of the United States of America.

There has therefore been a continuous education process to remind Americans just what those principles are. In his retirement at Monticello, Thomas Jefferson would spend evenings explaining to overnight guests what he had in mind when he helped create what we call America. By the mid-19th century it was just assumed that most Americans knew what it meant to be an American. In his letter from the Alamo, Col. William Barrett Travis pleaded for help simply ''in the name of liberty, patriotism and everything dear to the American character.''

New waves of immigration in the late 19th century brought to our country a record number of new people from other lands whose view of what it means to be an American was indistinct—and Americans responded by teaching them. In Wisconsin, for example, the Kohler Company housed German immigrants together so that they might be Americanized during nonworking hours.

But the most important Americanizing institution, as Mr. Shanker reminded us in Rochester in 1988, was the new common school. McGuffey's Reader, which was used in many classrooms, sold more than 120 million copies introducing a common culture of literature, patriotic speeches and historical references.

The wars of the 20th century made Americans stop and think about what we were defending. President Roosevelt made certain that those who charged the beaches of Normandy knew they were defending for freedoms.

But after World War II, the emphasis on teaching and defining the principles that unite us waned. Unpleasant experiences with McCarthyism in the 1950's, discouragement after the Vietnam War, and history books that left out or distorted the history of African-Americans made some skittish about discussing ''Americanism.'' The end of the Cold War removed a preoccupation with who we were not, making it less important to consider who we are. The immigration law changes in 1965 brought to our shores many new Americans and many cultural changes. As a result, the American Way became much more often praised than defined.

Changes in community attitudes, as they always are, were reflected in our schools. According to historian Diane Ravitch, the public school virtually abandoned its role as the chief Americanizing institution. We have gone, she explains, from one extreme—simplistic patriotism and incomplete history—to the other—''public schools with an adversary culture that emphasizes the Nation's warts and diminishes its genuine accomplishments. There is no literary canon, no common reading, no agreed-upon lists of books, poems and stories from which students and parents might be taught a common culture and be reminded of what it means to be an American.''

During this time many of our national leaders contributed to this drift toward agnostic Americanism. These leaders celebrated multiculturalism and bilingualism and diversity at a time when there should have been more emphasis on a common culture and learning English and unity.

America's variety and diversity is a great strength, but it is not our greatest strength. Jerusalem is diverse. The Balkans are diverse. America's greatest accomplishment is not its variety and diversity but that we have found a way to take all that variety and diversity and unite as one country. E pluribus unum: out of many, one. That is what makes America truly exceptional.

Since 9/11 things have been different. The terrorists focused their cross-hairs on the creed that unites Americans as one country—forcing us to remind ourselves of those principles, to examine and define them, and to celebrate them. The President has been the lead teacher. President Bush has literally taken us back to school on what it means to be an American. When he took the country to church on television after the attacks he reminded us

that no country is more religious than we are. When he walked across the street to the mosque he reminded the world that we separate church and state and that there is freedom here to believe in whatever one wants to believe. When he attacked and defeated the Taliban, he honored life. When we put planes back in the air and opened financial markets and began going to football games again we honored liberty. The President called on us to make those magnificent images of courage and charity and leadership and selflessness after 9/11 more permanent in our every day lives. And with his optimism, he warded off doomsayers who tried to diminish the real gift of Americans to civilization, our cockeyed optimism that anything is possible.

Just after 9/11, I proposed an idea I called ''Pledge Plus Three.'' Why not start each school day with the Pledge of Allegiance—as we did this morning here in the Senate—followed by a faculty member or student sharing for three minutes ''what it means to be an American.'' The Pledge embodies many of the ideals of our National Creed: ''one nation, under God, indivisible, with liberty and justice for all.'' It speaks to our unity, to our faith, to our value of freedom, and to our belief in the fair treatment of all Americans. If more future Federal judges took more classes in American history and civics and learned about those values, we might have fewer mind-boggling decisions like the one issued by the Ninth Circuit.

Before I was elected to the Senate, I taught some of our future judges and legislators a course at Harvard's John F. Kennedy School of Government entitled ''The American Character and America's Government.'' The purpose of the course was to help policymakrers, civil servants and journalists analyze the American creed and character and apply it in the solving of public policy problems. We tried to figure out, if you will, what would be ''the American way'' to solve a given problem, if such a thing were to exist.

The students and I did not have much trouble deciding that America is truly exceptional—not always better, but truly exceptional—or in identifying the major principles of an American creed or the distinct characteristics of our country; such principles as: liberty, equal opportunity, rule of law, laissez faire, individualism, e pluribus unum, the separation of church and state.

But what we also found was that applying those principles to today's issues was hard work. This was because the principles of the creed often conflicted. For example, when discussing President Bush's faith-based charity legislation, we knew that ''In God We Trust'' but we also knew that we didn't trust government with God.

When considering whether the Federal Government should pay for scholarships which middle and low income families might use at any accredited school—public, private or religious—we found that the principle of equal opportunity conflicted with the separation of church and state.

And we found there are great disappointments when we try to live up to our greatest dreams; For example, President Kennedy's pledge that we will ''pay any price or bear any burden'' to defend freedom, or Thomas Jefferson's assertion that ''all men are created equal,'' or the American dream that for anyone who works hard, tomorrow will always be better than today.

We often are disappointed when we try to live to those truths.

We learned that, as Samuel Huntington has written, balancing these conflicts and disappointments is what most of American politics and government is about.

If, most of our politics and government is about applying to our most urgent problems the principles and characteristics that make the United States of America an exceptional country, then we had better get about the teaching and learning of those principles and characteristics.

The legislation I propose today, with several cosponsors, will help our schools do what they were established to do in the first place. At a time when there are record numbers of new Americans, at a time when our values are under attack, at a time when we are considering going to war to defend those values, there can be no more urgent task than putting the teaching of American history and civics back in its rightful place in our schools so our children can grow up learning what it means to be an American.

Mr. President, I ask unanimous consent to have printed in the RECORD several items: A syllabus from the course that I taught, an article from the National Association of Scholars, and memoranda outlining the various Governors' schools in our State and other States.

I also highly commend to my colleagues a report from the Carnegie Corporation and CIRCLE titled ''The Civic Mission of Schools.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the National Association of Scholars]

TODAY'S COLLEGE STUDENTS BARELY MORE KNOWLEDGEABLE THAN HIGH SCHOOL STUDENTS OF 50 YEARS AGO, POLL SHOWS

PRINCETON, NJ, Dec. 18, 2002.—Contemporary college seniors scored on average little or no higher than the high-school graduates of a half-century ago on a battery of 15 questions assessing general cultural knowledge. The questions, drawn from a survey originally done by the Gallup Organization in 1955, covered literature, music, science, geography, and history. They were asked again of a random sample of American college and university students by Zogby International in April 2002. The Zogby survey was commissioned by the National Association of Scholars.

There were variations in the pattern of responses. The contemporary sample of seniors did better than the 1950s high school graduates on four questions relating to music, literature, and science, about the same on seven questions pertaining to geography, and worse on four questions about history.

The answers given by today's seniors were also compared to those provided to the Gallup questions by college graduates in 1955. Although the relatively small number of college graduates in the latter sample limits the degree of confidence one can have in the comparisons, the consistency and size of the knowledge superiority displayed by the 1950s college graduates strongly suggests that it is real.

The overall average of correct responses for the entire general knowledge survey was 53.5% for today's college seniors, 54.5% for the 1955 high school graduates, and 77.3% for the 1955 college graduates.

(Removing three questions about which, for reasons indicated in the full report, the earlier respondents may have had more ''extracurricular'' sources of knowledge, the figures become 50.3% for the 2002 seniors, 46.4% for the 1955 high school graduates, and 67.8% for the 1955 college graduates.)

In addition, the 2002 college seniors were asked two questions dealing with the reading and musical interests that were asked of national samples of the American population in 1946 and 1957. With respect to interest in high literate and musical culture, the answers fail to show impressive or consistent differences between the two groups.

On a question inquiring whether or not they had a favorite author, 56% of 2002 college seniors, as opposed to 32% of the general population in 1946—the great majority of whom had only an elementary or secondary school education—answered affirmatively. For both groups, however, most of the authors specifically mentioned were writers of popular fiction. When only responses naming ''high-brow'' and canonical writers were tabulated, the differences between the two groups shrank considerably: 17% of the national sample falling into a ''high-brow'' classification in 1946, as opposed to 24% of the 2002 college senior sample. Not a particularly large difference given the college senior's great advantage in formal education.

Asked whether or not they would like to collect a fairly complete library of classical music on LPs or CDs, the 1957 sample of owners 33 rpm-capable phonographs (37% of a national survey sample) provided a more affirmative response than did the 2002 college seniors, 39% of the former, and only 30% of the latter, responding ''Yes''.

On the other hand, the contemporary college seniors were more likely (69%) to have studied a musical instrument than were the members of the population as a whole (44%) in 1957. The type of instrument studied also differed, the 1957 national sample more heavily favoring the violin and piano than did the 2002 college seniors.

''The results,'' said NAS president Stephen H. Balch, ''though somewhat mixed and based on a limited number of questions, are hardly reassuring. America has poured enormous amounts of tax dollars into expanding access to higher learning. Students spend, and pay for, many more years in the classroom than was formerly the case. Our evidence suggests that this time and treasure may not have substantially raised student cultural knowledge above the high school levels of a half-century ago.''

''Worst yet,'' he continued, ''the high cultural interest and aspirations of today's college seniors are neither consistently nor substantially more elevated than yesteryear's secondary school graduates. Creating such interests and aspirations has traditionally been considered a core element of the collegiate experience. If the last fifty years have in fact witnessed few gains in this respect, it represents a real disappointment of once widespread hopes.''

GOVERNOR'S SCHOOLS APPENDIX

Virginia Governor's Schools for Humanities and Visual & Performing Arts:

Established in 1973;

Takes place in more than 40 sites throughout Virginia;

''The Governor's Schools presently include summer residential, summer regional, and academic-year programs serving more than 7,500 gifted students from all parts of the commonwealth'';

Funded by way of the Virginia Board of Education and the General Assembly (no specific figures readily available).

Pennsylvania Governor's Schools of Excellence:

Established in 1973;

Program is broken up into 8 schools (Agricultural Sciences-Penn State University, Global Entrepreneurship-Lehigh University, Health Care-University of Pittsburgh, Information Technology-Drexel University/Penn State University, International Studies-University of Pittsburgh, Teaching-Millersville University, the Arts-Mercyhurst College, the Sciences-Carnegie Mellon University);

Funded by the Commonwealth of Pennsylvania.

Mississippi Governor's School:

Established in 1981;

Program is hosted by the Mississippi University for Women;

Major academic courses change yearly, however, all courses are designed to provide ''academic, creative leadership experiences.''

West Virginia Governor's School for the Arts:

''Brings 80 of West Virginia's most talented high school actors, dancers, musicians, singers and visual artists to the West Liberty State College campus for a three-week residential program.''

Arkansas Governor's School:

Established in 1980;

Program is hosted by Hendrix College and attended by approximately 400 students yearly;

Areas of focus include ''art, music, literature, film, dance, and thought in the sciences, social sciences, and humanities'';

This 6–week program is funded by the Arkansas General Assembly.

Governor's schools for Montana, Massachusetts, and Connecticut not found.

Alabama Governor's School:

Established in 1987;

Program is hosted by Samford University;

Academic courses stress fieldwork and problem-solving; the arts, humanities and sciences are also explored;

Major and minor areas of study include, ''The Legal Process, American Healthcare, and Urban Geography.''

Delaware Governor's School for Excellence:

One-week summer program;

Open to academically and artistically talented sophomores from Delaware high schools;

Students attend either the academic program or the visual and performing arts program.

Kentucky Governor's Scholars Program:

Established in 1983;

Held on the campuses (2003) of Centre College in Danville, Eastern Kentucky; University in Richmond, and Northern Kentucky University in Highland Heights;

Five-week long summer program;

Students may choose from over 20 subjects, including; engineering and cultural anthropology;

Students selected attend the program free of cost.

Kentucky Governor's School for the Arts:

Provides hands-on instruction for Kentucky's dancers, actors, and musicians;

No charge to students because it is paid for by the State;

Open to sophomores and juniors in high school.

Missouri Scholars Academy:

Three-week academic program for Missouri's gifted students;

330 students attend each year;

Held on the campus of University of Missouri-Columbia;

Administered by the Department of Elementary and Secondary Education, in cooperation with University of Missouri officials;

Funds to support the Academy are appropriated by the Missouri Legislature following state Board of Education recommendations;

Academy focuses on liberal arts and numerous extra-curricular activities.

A GLANCE AT TENNESSEE GOVERNOR'S SCHOOLS

GOVERNOR'S SCHOOLS

Background

The Governor's School concept and practice began in North Carolina in 1963 when Governor Terry Sanford established the first one at Salem College, Winston-Salem, North Carolina. The first school was initially funded through a grant from the Carnegie Corporation. Later it came under the auspices of the North Carolina Board of Education of the North Carolina Department of Education.

Upon the establishment of the first school, several states, including Georgia, South Carolina, Arkansas, Kentucky, and Tennessee established similar schools. As of 1996, there were approximately 100 schools in 28 states.

TENNESSEE GOVERNOR'S SCHOOLS

Background

The 1984 Extraordinary Session of the Tennessee General Assembly mandated the Governor's School program as a way of meeting the needs of Tennessee's top students. For many years this program has been included in the Appropriation Bill of the General Assembly.

The Governor's Schools started with 3 schools (100 students each) in 1985:

1. Humanities at U.T. Martin increased to 150 (2000 = 123; 2001 = 113).

2. Sciences at U.T. increased to 150 (2000 = 119; 2002 = 107).

3. Arts at M.T.S.U. increased to 300 (2000 = 226; 2001 = 226).

Added in 1986 International Studies at U. of Memphis originally served 150 (2000 = 115; 2001 = 106).

Added in 1987 Tennessee Heritage at E.T.S.U. originally served 80 (2000 = 57; 2001 = 51).

Added in 1991 Prospective Teachers at U.T. Chattanooga originally served 30 (2000 = 25; 2001 = 22).

Added in 1996 Manufacturing at U.T. originally served 30 (2000 = 26; 2001 = 21).

Added in 1998 Hospitality and Tourism at TSU originally served 60 (2000 = 60; 2001 = 0).

Added in 1999 Health Sciences at Vanderbilt originally served 25 (2000 = 20; 2001 = 0).

Discontinued in 2001 Hospitality and Tourism (per legislature).

Discontinued in 2001 Health Sciences (per legislature).

Added (but not held) in 2002 Information Technology Leadership at T.T.U. originally served 30.

Suspended for 2002 All Governor's School Programs.

During the 2001 Governor's Schools session 646 students attended.

2001 total amount allotted to the Governor's Schools: $1,411,000.00 (1999 = $1,981.08 per student; 2000 = $2,037.61 per student; 2001 = $2,180.83 per student)

Governor's Schools today

Today, there are 8 Governor's Schools across the state, serving several hundred students and teachers each year. Although funding for the schools was cut last year during a budget crisis, support has been restored this year.

As stated earlier, there are currently 8 Governor's Schools across the state. Each school is held on a college campus during the summer months. Listed below is a table of all of the schools, including subject area that is taught, the location, and the dates for the 2003 session.

The School for the Arts—June 15–July 12, 2003–held on the Middle Tennessee State University campus in Murfreesboro, and located only 30 miles from Nashville and the Tennessee Performing Arts Center.

The School for the Sciences—June 15–July 12, 2003–held on the campus of the University of Tennessee in Knoxville, near the Oak Ridge National Laboratories, Tremont Environmental Center, and in the heart of TVA.

The School for the Humanities—June 15–July 12, 2003–held on the campus of the University of Tennessee at Martin, in the center of Shiloh Battleground and the sociological cultures of the Mississippi and Tennessee Rivers.

The School for International Studies—June 15–July 12, 2003–held on the campus of The University of Memphis, in the heart of Tennessee's growing international corporate center, home to Federal Express, Holiday Inns, and Schering-Plough.

The School for Tennessee Heritage—June 15–July 12, 2003—held on the campus of East Tennessee State University-in Johnson City-surrounded by the area where Tennessee's history began and only a few miles from Jonesborough, the state's oldest existing city.

The School for Prospective Teachers—June 15–July 12, 2003—held on the campus of the University of Tennessee at Chattanooga—with access to many schools throughout the area.

The School for Manufacturing—June 15–July 12, 2003—held on the campus of the University of Tennessee in Knoxville—focuses on the importance of manufacturing as an integral part of the culture and economy of Tennessee.

President's School for Information Technology and Leadership—June 15–July 12, 2003—this self-funded school will be held on the campus of Tennessee Technological University in Cookeville. It focuses on developing a complete business plan for an information technology-based business and enhancing student's knowledge of information technology and business leadership.

The Tennessee Governor's Schools offer selected gifted and talented high school students intensive learning experiences in the Humanities, Math and Science, Arts, International Studies, Tennessee Heritage, Prospective Teaching, Manufacturing and Information Technology Leadership. Admission to the various programs are highly competitive, as 1,250 applications have been received thus far for the 2003 year for The School for the Arts, and only 300 spots are available. Additionally, The School for the Sciences has received 800 applications thus far, for 125 spots.

Students in the 10th and 11th grades who are interested in participating in the programs receive information from their school's guidance counselor and then proceed with the application process.

Students selected to attend these highly competitive schools are provided housing and meals for the duration of the program, which is about a month long. Students participate in a variety of courses that are offered. For example, there were 14 academic

courses offered to the 115 scholars at the Governor's School for the Humanities in 2001. All of the scholars were enrolled in courses at 9 a.m. and 10:15 a.m. This particular curriculum was designed to expose the scholars to a rich selection of humanities courses including literature, philosophy, religion, ethics, poetry, history and media studies. In addition to the required morning classes, the scholars were given the opportunity to participate in afternoon electives, such as the yearbook staff and the student newspaper. In the evening hours at the Governors School for the Humanities, students were offered a broad-range of humanities-related speakers and activities.

Governor's Schools make a difference

The scholars' satisfaction with the 2001 Governor's School for the Humanities program is reflected in the overall rating of the program, with 94% of the scholars rating the program as either ''excellent'' or ''very good.''

This satisfaction is also evident from the feedback the students were asked to write upon completion of the 2001 Governor's School for the Humanities program. Some examples of the feedback from the program are as follows:

''I had the fortunate chance of coming here, and I am glad I came. The cool thing about the people here is that I got along with everyone, and I especially got along very well with my roommate. My favorite class was Lord Chamberlain's Men. I better developed my acting skills and overall understanding of what goes on in a play production. This campus is so beautiful. The people, activities, and atmosphere are unbelievable. I have had the time of my life here, and I would especially come to this campus again for a future GS, but I doubt that is possible. I love the freedom I get from being here. The classes were challenging for me and I believe I am prepared for my classroom experience now. There are some very strange people that came here who I wouldn't even think would be accepted to Governor's School. I have learned to accept all different types of people and their views and lifestyles since coming to GS. I love the fact that Tennessee is rewarding me and everyone here that is smart with the opportunity to become a better person. This experience was wonderful. I speak for a lot of people when I say that I don't want to leave!''

''I honestly would have to say that Governor's School has been one of the best experiences I have ever had. By coming here, I have met so many people from different backgrounds, and I learned to grow as a person. I learned so much in and out of class, both from the staff and students. I really enjoyed all the activities because I had fun and because I was able to be myself. The atmosphere was so receptive and nurturing, and the teachers showed that they wanted us to learn and grow. I feel that the variety of electives offered allowed each person to pick what he/she was interested in and enabled each person to show their talents and abilities. The time in which I was here flew by, but so many wonderful things happened. It sounds funny, but every time I would write or call home, I couldn't help but smile as I told my parents about the fun I was having. This may or may not seem relevant to the Governor's School experience, but it helped me to see that I can go off to college in a year and I will be fine. Overall, I feel that this was a positive growing experience, and I can't wait to take back home all that I have learned. Thank you all so much!''

Other Governor's Schools around the country

The Arkansas Governor's School is a 6–week summer residential program for gifted students who are upcoming high school seniors and residents of Arkansas. State funds provide tuition, room, board, and instructional materials for each student who attends the six-week program on the site of a residential college campus, leased by the State. The Arkansas Governor's School is a non-credit program. Students are selected on the basis of their special aptitudes in one of eight fields: choral music, drama, English/language arts, instrumental music, mathematics, natural science, social science, or visual arts.

The Virginia Governor's School Program provides some of the state's most able students academically and artistically challenging programs beyond those offered in their home schools. With the support of the Virginia Board of Education and the General Assembly, the Governor's Schools presently include summer residential, summer regional, and academic-year programs serving more than 7,500 gifted students from all parts of the commonwealth. There are three types of Governor's Schools that provide appropriate learning endeavors for gifted students throughout the commonwealth: Academic-Year Governor's Schools, Summer Residential Governor's Schools, and the Summer Regional Governor's Schools. The Virginia Department of Education and the participating school divisions fund the Governor's School Program.

The Georgia Governor's Honors Program is a six-week summer instructional program designed to provide intellectually gifted and artistically talented high school juniors and seniors challenging and enriching educational opportunities. Activities are designed to provide each participant with opportunities to acquire the skills, knowledge, and attitudes to become life-long learners. The program is held on the campus of Valdosta State University, in Valdosta, Georgia. The GHP teacher-to-student ratio is usually 1:15.

THE AMERICAN CHARACTER AND AMERICA'S GOVERNMENT: USING THE AMERICAN CREED TO MAKE DECISIONS

(Professor Lamar Alexander, John F. Kennedy School of Government, Harvard University, Spring 2002)

OBJECTIVE OF THE COURSE

To help future decision-makers use the principles of the American Creed to solve difficult, contemporary public policy problems. Students will first explore America's ''exceptionalism'': how an idea-based national ideology makes the United States different from other countries—including other Western democracies. Then, each session will analyze one value of the ''American Creed''—and how it conflicts with other values and/or creates unrealized expectations—in the solving of a specific problem. Students will simulate realistic policy-making situations and produce professional products as assignments: concise memos, outlines and briefings.

RATIONALE FOR THE COURSE

In Thanksgiving remarks President Bush praised the nation's response to September 11. ''I call it,'' he said, ''the American Character''. At KSG Al Gore said, ''We should [fight] for the values that bind us together as a country''. Both men were invoking a creed of ideas and values in which most Americans believe. ''It has been our fate as a nation,'' Richard Hofstader wrote, ''not to have ideologies but to be one.'' This value-based national identity has inspired both patriotism and division at home, both emulation and hatred abroad. For terrorists as well as for those who admire America, at issue is the United States itself—not what we do, but who we are.

Yet Americans who unite on principle divide and suffer disappointment when using their creed to solve policy problems. This is because the values of the creed conflict (e.g., liberty vs. equality, individualism vs. community) and because American dreams are loftier than American reality (e.g., ''all men are created equal'', ''tomorrow will be better than today''). Samuel Huntington has said that balancing these conflicts and disappointments is what most of American politics and government is about. That is also what this course is about.

AUDIENCE

The Course is designed for future policy makers, civil servants, and journalists. A general knowledge of American politics is helpful but not required. It should be useful for both U.S. and international students seeking to learn more about the American system of government and how it differs from that of other countries.

INSTRUCTOR

Lamar Alexander, The Roy M. and Barbara Goodman Family Visiting Professor of Practice in Public Service, has been Governor of Tennessee, President of the University of Tennessee, and U.S. Education Secretary. He co-founded Bright Horizons Family Solutions, Inc., now the nation's largest provider of worksite day care. His seven books include Six Months Off, the story of his family's trip to Australia after eight years in the Governor's residence. In 1996 and 2000 he was a candidate for the Republican nomination for President of the United States. For more see www.lamaralexander.com. Office: Littauer 101; Telephone: (617) 384–7354; E-mail: lamar__alexander@ksg.harvard.edu.

OFFICE HOURS

Office hours will generally be on Tuesdays and Wednesdays. A sign up sheet will be posted outside Professor Alexander's door. Appointments may also be made by e-mailing kay@lamaralexander.com

COURSE ASSISTANT

Matt Sonnesyn will be course assistant for PAL 223 and may be reached by email at matthew__sonnesyn@ksg02.harvard.edu.

EXPECTATIONS

This is a graduate level professional course and will have the corresponding standards and assignments: attendance at all scheduled classes, assignments completed on time, and evaluation according to students' preparation of professional products—crisp and realistic decision memos, memo outlines, and policy briefings. All briefings are conducted in class and all decision memos and weekly outlines are due at the beginning of the corresponding class session. There is no final exam, but there will be a final paper.

GRADING

Briefings (2): team exercise 20 percent. Two times during the course each student will participate in a team briefing on that week's subject.

Memos (2): team exercise 20 percent. Two other times during the course each student will participate in a team preparing a three-page decision memo on that week's subject . The student may select these from among the class topics.

Weekly Outlines (6): 20 percent. Six other times during the course each student will prepare a one-page analysis of the week's problem. (This will be during those weeks when the student is not involved in preparing a team briefing or team memo.) As a result, for ten of the twelve class sessions, each student will have an assignment (other than reading) that requires preparation outside of class—either a team briefing, a team memo, or an individual weekly memo outline.

Class participation and attendance: 15 percent.

Final Paper: 25 percent.

Final grades will be determined by students' overall position in the class as measured by performance on each of the assignments and will conform to the Kennedy School of Government's recommended range of grading distribution.

MATERIALS

The course relies primarily on course packets to be made available for sale at the Course Materials Office. There will be 125–150 pages of reading each week. There are three required textbooks:

(1) Alexis de Tocqueville, Democracy in America, translated and edited by Harvey C. Mansfield and Delba Winthrop, The University of Chicago Press, 2000.

(2) Seymour Martin Lipset, American Exceptionalism, W.W. Norton & Co., 1997 (paperback).

(3) Samuel P. Huntington, ''American Politics: The Promise of Disharmony'', The Belknap Press of Harvard University, 1981.

All three books are available for purchase at the Harvard Coop. Copies of all three books are on reserve in the KSG library.

Note: Readings from the three required textbooks or readings which are readily available online are not included in the course packet. (Hypertext links to the online readings may be found within the syllabus that is posted on the KSG website.)

ENROLLMENT

The course has a limited enrollment. Auditors are permitted with permission of the instructor.

COURSE OUTLINE AND REQUIRED READINGS

2/5: My ''ism'' is Americanism—American Exceptionalism. One hundred and one ways Americans are different. So what?

Alexis de Toqueville, Democracy in America, edited by Harvey C. Mansfield and Delba Winthrop, University of Chicago Press, Chicago, 2000, pp. 3–15, 90, 585–587, 225–226.

G.K. Chesterson, What I Saw in America, Dodd, Mead & Co., 1922, pp. 6–12.

Daniel J. Boorstin, ''Why a Theory Seems Needless'', The Genius of American Politics, 1953, The University of Chicago Press, p. 8–35.

Samuel P. Huntington, ''The American Creed and National Identity,'' American Politics: The Promise of Disharmony, 1981, pp. 13–30.

Albert Hourani, A History of the Arab Peoples, 1991, The Belknap Press of Harvard University Press, Cambridge, pp. 46–58.

Samuel P. Huntington, The Clash of Civilizations, Simon and Schuster, 1996, pp. 40–55, 68–78, 301–308.

Seymour Martin Lipset, American Exceptionalism, pp. 17–34.

2/12: ''. . . where at least I know I'm free . . .''—Liberty. Should Congress repeal President Bush's executive order allowing non-citizens suspected of international terrorism to be detained and tried in special military tribunals?

Alexis de Toqueville, ibid., pp. 239–242, 246–249, 301, 639–640.

U.S. Constitution and amendments, 1787. http://memory.loc.gov/const/constquery.html.

John Stuart Mill, ''The Authority of Society and the Individual'', On Liberty, 1859, Hackett Publishing Co. edition, 1978, pp. 73–91.

Carl Brent Swisher, American Constitutional Development, Greenwood Press, Connecticut, 1954, pp. 276–292, 1017–1025.

Samuel P. Huntington, ''The American Creed vs. Political Authority,'' American Politics: The Promise of Disharmony, 1981, pp. 31–60.

Richard E. Neustadt and Ernest R. May, Thinking in Time, The Free Press, pp. 232–246, 1988.

An Executive Order of President George W. Bush, ''Detention, Treatment and Trial of Certain Non-Citizens in the War against Terrorism'', November 13, 2001.

Jeffrey Rosen, ''Testing the Resilience of American Values'', The New York Times Week in Review, Sunday, Nov. 18, 2001, pp. 1 and 4.

Laurence H. Tribe, Statement before U.S. Senate Judiciary Committee, December 4, 2001.

''American Attitudes Toward Civil Liberties'', public Opinion survey, by Kasier Foundation, National Public Radio and Kennedy School of Government, December 2001. http://www.npr.org/news/specials/civillibertiespoll/011130.poll.html.

2/19: In God We Trust . . . but we don't trust government with God—Christianity, pluralism and the state. Should Congress enact President Bush's faith-based charity legislation?

Alexis de Toqueville, ibid., pp. 278–288.

John Locke, ''A Letter Concerning Toleration'', Diane Ravitch and Abigail Thernstrom, The Democracy Reader, NY: HarperCollins, 1992., ibid., pp. 31–37.

Thomas Jefferson, ''Notes on the State of Virginia'', Ravitch and Thernstrom, ibid., pp. 108–109.

James Madison, ''Memorial and Remonstrance against Religious Assessments'', 1785, The Writings of James Madison, NY: Putnam, 1908.

''Separation of Church and State in American Bought about by the Scotch-Irish of Virginia'', Charles. A. Hanna, The Scotch Irish, Vol. II, 1985, Genealogical Publishing Co., Baltimore, pp. 157–162.

Philip Schaff, America: A Sketch of its Political, Social and Religious Character, 1961, The Belknap Press of Harvard University, pp. 72–83.

Engel vs. *Vitale*, 370. U.S. 421 (1962).

Marvin Olasky, ''The Early American Model of Compassion'', The Tragedy of American Compassion, Regnery Publishing, Washington, D.C., 1992, pp. 6–23.

Lamar Alexander, ''Homeless, not hopeless'', We Know What to Do, William Morrow, New York, 1995, pp. 35–51.

Two Executive Orders of President George W. Bush, ''Establishment of White House Office of Faith-Based and Community Initiatives'' and ''Agency Responsibilities with respect to Faith-based Community Initiatives''. January 29, 2001.

2/26: ''Leave no child behind''—Equal Opportunity. Should the federal government pay for scholarships that middle and low-income families may use at any accredited school— public, private or religious?

Alexis de Toqueville, ibid, pp. 41–42.

Horace Mann, ''Report of the Massachusetts Board of Education, 1848'' in Daniel J. Boorstin, An American Primer, Meridian, 1995, pp. 361–375.

Charles Leslie Glenn, Jr. The Myth of the Common School, The University of Massachusetts Press, 1988, pp. 146–158.

Lamar Alexander, ''The GI Bill for Kids'', The John Ashbrook Lecture, presented at Ashland (O.) University, 9/12/92. http://www.lamaralexander.com/articles.htm.

Thomas J. Kane, ''Lessons from the Largest School Voucher Program'', Who Chooses? Who Loses?, edited by Bruce Fuller and Richard F. Elmore, Teachers College Press, 1996, pp. 173–183.

Michael W. McConnell, ''Legal and Constitutional Issues of Vouchers'', Vouchers and the Provision of Public Schools, The Brookings Institution, 2000, pp. 368–391.

Eliot M. Mincberg and Judith E. Schaeffer, ''Grades K–12: The Legal Problems with Public Funding of Religious Schools'', Vouchers and the Provision of Public Schools, pp. 394–403.

Diane Ravitch, ''American Traditions of Education'', Terry M. Moe, A Primer on America's Schools, Hoover Institution Press, 2001, pp. 1–14.

Paul Peterson, ''Choice in American Education'', A Primer on America's Schools, pp. 249–283.

Diane Ravitch, ''Ex Uno Plures'', Education Next, Fall 2001, pp. 27–29

3/5: Equal at the starting line . . . but what about those with shackles?—Individualism. Should the federal government pay for race-based college scholarships?

Alexis de Toqueville, ibid., pp. 326–334, 347–348; 482–488.

The Declaration of Independence, 1776. http://memory.loc.gov/const/declar.html.

Abraham Lincoln, Second Inaugural Address (1865). http://www.bartleby.com/124/pres32.html

Frederick Douglass, ''What to the Slave is the Fourth of July?'' http://douglass.speech.nwu.edu/doug__a10.htm.

Martin Luther King, Jr., address at the Lincoln Memorial in Washington, D.C., August 28, 1963. http://douglass.speech.nwu.edu/king__b12.htm

Excerpts from University of California Regents v. Bakke, 438 U.S. 265 (1978).

Testimony of Lamar Alexander, U.S. Education Secretary, Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 102nd Congress, 2nd session, Feb. 20, 1992, pp. 39–46, 82–89, 99–102.

Seymour Martin Lipset, ''Two Americas'', American Exceptionalism, pp. 113–150.

Abigail Thernstrom and Stephen Thernstrom, America in Black and White, New York, Simon & Schuster, 1997. pp. 530–545.

Cornel West, ''Malcolm X and Black Rage'', Race Matters, Random House, Vintage Books, New York, 2001, pp. 135–151.

3/12: A nation of immigrants . . . but all Americans—E Pluribus Unum. Should illegal aliens have Illinois driver's licenses? discounted tuition at state colleges? free medical care? should their children attend public schools?

Alexis de Toqueville, ibid., pp. 29–30. 32. 34–37, 268.

J. Hector St. John de Crevecouer, ''What is an American'', Letters from an American Farmer, 1782, Penguin Books edition 1986, pp. 67–90.

Arthur M. Schlesinger, Jr., The Disuniting of America, W.W. Norton, New York, 1991, pp. 9–43.

Carlos E. Cortes, ''Limits to pluribus, limits to unum'', National Forum, Baton Rouge, Winter, 1992. pp. 6–10.

Samuel P. Huntington, The Clash of Civilizations, Simon and Schuster, 1996, pp. 198–206.

J. Harvie Wilkinson, ''The Medley of America'', One Nation Indivisible, Addison Wesley, 1997, pp. 3–21.

Griffin Bell, ''The Changing Role of Migrants in the United States'', Address to the International Leadership Issues Conference of State Legislative Leaders Foundation, Budapest, October 4, 2001.

David Cohen, Chasing the Red, White and Blue, New York, 2001. St. Martin's Press, pp. 218–236, 250–260.

Morris P. Fiorina and Paul E. Peterson, The New American Democracy, Longman, 2002, pp. 99–108.

3/19: Suspending the constitution in order to save it—Rule of Law. Should the governor-elect seize office three days early to prevent the incumbent governor from selling pardons for cash?

Alexis de Toqueville, ibid., pp. 229–231.
US Constitution, 25th Amendment. http://memory.loc.gov/const/constquery.html.
Tennessee Constitution Article 3, Section 12. http://www.state.tn.us/sos/bluebook/online/section6/tnconst.pdf (p. 12).
Tennessee Acts Section 8–1–107.
Lon Fuller, ''The Morality that Makes Law Possible'', The Morality of Law. Yale Law School Press, 1964. pp. 33–44.
John D. Feerick, The Twenty-Fifth Amendment: Its Complete History and Earliest Applications. Fordham University Press, 1976. pp. 3–23, 193–206.
Bush v. Gore, 2000. http://www.supremecourtus.gov/florida.html.
Al Gore, address to the nation, December 13, 2000. http://www.cnn.com/ELECTION/2000/transcripts/121300/t651213.html.
Paul F. Boller, Jr., ''Picking the Day'', Presidential Inaugurations, Harcourt, Inc., 2001, pp. 23–31.
James W. Torke, ''What Is This Thing Called the Rule of Law?'' Indiana Law Review. Volume 34, 2001. pp. 1445–56.
Dotty Lynch, ''Back to Abnormal'', Sept. 28, 2001, from CBS News Site. http://www.cbsnews.com/now/story/0,1597,312915–412,00.shtml.
Tim McGirk, ''Wahid's In, Megawati's Out'', Dec, 8, 2001, from Time Asia. http://www.time.com/time/asia/news/interview/0,9754,168569,00.html.
Gordon Silverstein, ''Globalization and the Rule of Law'', mimeo, The University of Minnesota, 2001.

3/26: Harvard break.
4/2: ''Ask not what your country can do for you . . .''—Community. Should all high school graduates perform one mandatory year of community service?

Alexis de Toqueville, ibid., pp. 56–58, 577–78, 489–92.
Robert N. Bellah, et al, Habits of the Heart, University of California Press, 1985, pp. vii–xxxv, 275–296.
Daniel Boorstin, ''From Charity to Philanthropy'', Hidden History, Vintage, New York, 1989, pp. 193–209.
Barry Alan Shain, The Myth of American Individualism, Princeton University Press, 1994, pp. xiii-xix.
Lamar Alexander, ''What's Wrong With American Giving and How to Fix It,'' Philanthropy, Summer 1997. http://www.lamaralexander.com/articles_03.htm.
Robert D. Putnam, Bowling Alone, Simon & Schuster, 2000, pp. 15–28, 48–64, 116–133, 402–414.

4/9: Why Americans don't trust Washington, D.C.—A government of, by and for the people. Should the U.S. create a citizen congress: cut their pay and send them home six months a year, adopt term limits and two-year federal budgets?

Alexis de Toqueville, ibid. pp. 53–55.
Aristotle, ''Politics'', from Ravitch and Thernstrom, pp. 9–12.
Edmund Burke, ''On Election to Parliament'', Ravitch and Thernstrom, ibid. pp. 50–51.
Samuel P. Huntington, ''The American Creed and National Identity,'' American Politics: the Promise of Disharmony, 1981, pp. 36–41.
E.J. Dionne, ''The Politics of the Restive Majority'', Why Americans Hate Politics, Touchstone, New York, 1991, pp. 329–355.
Lamar Alexander, ''Cut Their Pay and Send Them Home,'' 1994, address to The Heritage Foundation.
Seymour Martin Lipset, American Exceptionalism, pp. 35–46.
Joseph S. Nye, et al, Why People Don't Trust Government, Harvard University Press, 1997, pp. 253–281.
Mark Kim, David King, Richard Zechhauser, ''Why State Governments Succeed'', mimeo, John F. Kennedy School of Government, Harvard University, 2001.

4/16: ''Work! For the night is coming . . .''—Laissez Faire. Should the federal government pay all working Americans ''a living wage''?

Alexis de Toqueville, ibid. pp. 506–08, 555–557, 606–608.
Herbert Croly, The Promise of American Life, 1909, Northeastern University Press, pp. 1–26.
Kevin Phillips, ''The Triumph of Upper America'', The Politics of Rich and Poor, Harper, 1991, pp. xvii-xxiii.
C. Vann Woodward, ''The Pursuit of Happiness'', The Old World's New World, Oxford University Press, 1991, pp. 40–62.
Seymour Martin Lipset, ''Economy, Religion and Welfare'', American Exceptionalism, pp. 53–76.
David Neumark and William Washer, ''Using the EITC to Help Poor Families: New Evidence and a Comparison with the Minimum Wage'', NBER Working Paper #7599 March 2000, pp. 1–4, 24–27. http://papers.nber.org/papers/W7599.
Charles Handy, ''DeToqueville Revisited: The Meaning of American Prosperity'', Harvard Business Journal, January 2001, pp. 5–11.
David Neumark, ''Living Wages: Protection For or Protection From Low-Wage Workers'', NBER Working Paper #8393, July 2001, pp. 1–7, 25–27. http://papers.nber.org/papers/W8393.
David Cohen, Chasing the Red, White and Blue, New York, 2001. St. Martin's Press, pp. 52–80.
Harvard Living Wage Statements. http://www.hcecp.harvard.edu/report.htm and http://www.hcs.harvard.edu/~pslm/livingwage/portal.html.

4/23: ''Pay any price, bear any burden . . .''—Exporting American Values. Putin shuts down last remaining independent Russian TV station (owned 25% by Ted Turner), expels 100 foreign journalists for ''inaccurate reporting'' including all Fox News personnel. What does U.S. do?

Alexis de Toqueville, ibid., pp. 217–220.
George Washington's Farewell Address, 1795. http://www.yale.edu/lawweb/avalon/washing.htm.
John F. Kennedy's Inaugural Address, 1961. http://www.bartleby.com/124/pres56.html.
Samuel P. Huntington, American Politics: the Promise of Disharmony, pp. 240–262.
Graham T. Allison, Jr. and Robert P. Beschel, Jr., ''Can the United States Promote Democracy'', Political Science Quarterly, Volume 107, No. 1, 1992, pp. 81–89.
Henry Kissinger, ''The Hinge: Theodore Roosevelt or Woodrow Wilson'', Diplomacy, New York Simon & Schuster, 1994, pp. 29–55.
Lamar Alexander, ''In War and Peace'', We Know What to Do, pp. 95–107.
Samuel P. Huntington, The Clash of Civilizations, pp. 309–321.
Samantha Power, ''Bystanders to Genocide'', The Atlantic Monthly, September 2000, pp. 84–108.
Walter Russell Mead, Special Providence: American Foreign Policy and How it Changed the World, Alfred A Knopf, New York 2001, pp. xv-xviii, 3–29.

4/30: Anything is possible—Unbridled optimism. Should there be a $1000 limit on individual federal campaign contributions?

Alexis de Toqueville, ibid., pp. 187–189.
Larry J. Sabato, ''PACs and Parties'' Money, Elections and Democracy: Reforming Congressional Campaign Finance, 1990, Boulder, Colorado, Westview Press.
Todd Eardensohn, A Review of the Alexander for President Campaign Budget (1995–1996).
Samuel P. Huntington, The Clash of Civilizations, Simon and Schuster, 1996, pp. 308–321.
Seymour Martin Lipset, American Exceptionalism, pp. 51–52, 267–292.
Lamar Alexander, ''Should Tom Paine Have Filed with the FEC?'', January 21, 1998, address to The Cato Institute.
Andrew Del Banco, The Real American Dream, 1999, Harvard University Press, pp. 103–118.
Lamar Alexander, ''Put More Money Into Politics'', August 27, 1999, The Wall Street Journal. http://www.lamaralexander.com/articles_01.htm.
Alexander, ''Keeping the Dream Alive'', We Know What to Do, ibid, pp. 165–180.

Mr. ALEXANDER. Mr. President, I thank the majority leader for this time. I yield the floor.

The PRESIDENT pro tempore. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I rise to say I believe the speech the Senator from Tennessee has given today was an extraordinary speech, which was his first speech on the floor. Actually, it was not his first speech on the floor, but we are calling it his maiden speech. He gave a speech last week that had a huge impact relative to the Estrada nomination, which is the pending business. But this statement today by the Senator from Tennessee highlights effectively and poignantly the importance of teaching civics and history in classes in America. His bill, which he has proposed, of which I am a cosponsor, is a step which is long overdue.

As he so effectively pointed out in his speech, we, as a nation, need to teach our children about our roots and our purpose as a country if we are to continue our creed of bringing one out of many.

So I thank him for his statement. I think it was a superb statement. And I thank him for his legislation, which I hope we will be able to act on promptly and pass and put into operation so we can pass on to our children, through our public school system, the importance of the American culture and history.

The PRESIDENT pro tempore. The Chair, in his capacity as a Senator from the State of Alaska, asks unanimous consent that he be added as a cosponsor.

Without objection, it is so ordered.

The Senator from Wyoming.

Mr. ENZI. Mr. President, I congratulate the Senator from Tennessee on an outstanding and inspiring speech. I feel tremendously more patriotic now than when I came in the Chamber. And there is no way one can come into this Chamber without feeling patriotic.

I am just hoping that classrooms across America do not wait for the legislation; that they go ahead, get on the Internet, get a copy of the Senator's speech, get a copy of the materials that accompany it, and get busy on this right away.

The Senator is absolutely right. This is a country that began unifying on September 11. It is in a huge process of reunifying, of finding the commonality between the people who have united

the American people and made this the kind of country that it is.

I congratulate the Senator for his inspired speech and the work he has done on this bill. I have heard the Senator speak on this bill and have seen his passion on it before.

Mr. President, I also ask unanimous consent to be added as a cosponsor of the bill.

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

Mr. ENZI. I thank the Senator for all his efforts.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I also join in thanking the Senator from Tennessee for his very inspiring comments. I am part of the new class of Senators. I will have an opportunity to give my maiden speech, though obviously I have spoken on the floor before.

I thought this was an important maiden speech. This was the first of the speeches of the new Senators of the 108th, and I think it was the right speech. We are going to discuss a lot of issues in these very challenging times—a time when we are on the edge of war, a time in which the values we hold so dear are challenged by terrorists, are challenged by oppression, and challenged by hate.

We live in a time of great uncertainty about the economy, about jobs, with moms and dads who worry about their economic futures.

So we are going to debate a lot of issues. We are worried about the future of health care and the future of prescription drugs for seniors. We are worried about baby boomers who are going to get old—and do we have a national policy dealing with long-term care?

But at the core of all that we debate is this very fundamental concept that the Senator from Tennessee has raised; that is, What does it mean to be an American? What does it mean to celebrate freedom, to celebrate opportunity, and to be an optimist and have a hopeful spirit?

So I applaud the Senator from Tennessee for, in his maiden speech, setting forth the seminal concept that binds us.

I have noticed, with a little bit of sadness, the very partisan tone of so much of what we do. And I have always believed if we spent more time focusing on the things upon which we agree, rather than things on which we disagree, we would get through those. I think there is great agreement in this body on what we agree on, and that is what it is to be an American.

I think it is important to transmit those values to the next generation so that the next generation can reinforce that to our generation because sometimes we forget.

So, again, I add my voice of thanks to the Senator from Tennessee for raising this issue. It is so appropriate at this point in time.

Mr. President, I also ask unanimous consent that I be added as a cosponsor on the Senator's legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COLEMAN. I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I congratulate my colleague, through the Chair, for his words of inspiration. This concept of unity, this concept of patriotism, this concept of the essence of what being an American is all about, has been a real focus for all of us throughout our lives.

September 11, as my distinguished colleague mentioned, gave us a time to rethink. I think what he has done today by introducing this bill is give us a real focus in this body, to allow us to shine the light on what we feel but which we do not articulate and spell out and communicate to the American people very well because we debate small issues, big issues, discreet issues, and a lot of rhetoric flies back and forth.

So I appreciate the Senator taking the time to put together this piece of legislation, as well as spelling it out in his maiden speech.

I especially appreciate, in his comments, mentioning the importance of teachers and setting up, in a structured fashion, a forum with which he has direct experience, by which we can give some discipline to and cultivate and encourage and show the national importance of its support.

He mentioned the Pledge of Allegiance. It was not that long ago in this body that we made a decision to revive having the Pledge of Allegiance recited at the opening of each session. That was really just several years ago.

It shows, by somebody taking an initiative, such as my colleague from Tennessee has done, that by giving it definition, you, indeed, can advance down the field and make progress.

In this legislation we have an opportunity to continue with and to, indeed, capture what we know this great Nation is all about, and perpetuate it in a more organized, systematic way.

Mr. President, I ask unanimous consent that I, too, be added as a cosponsor of this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, my friend, the junior Senator from Tennessee, has this morning introduced legislation that I think is extremely important. I was happy to join with him as the lead cosponsor in that legislation. Certainly the Senator from Tennessee has the qualifications to offer legislation relating to education. He has been Governor of a State. He has been the secretary of education for our country. So when I saw this legislation come across my desk, I thought it was something in which I was interested. After reviewing it more closely, I am happy to be the lead cosponsor on this legislation, the American History and Civics Education Act.

First of all, I agree with the Senator from Tennessee that civics or the duties of citizenship need to be stressed more. The best place it can be stressed is through educating our children, K through 12. It is the same with history. Mr. President, I love the study of history. I read fiction only occasionally. I read nonfiction all the time. I am presently engaged in a tremendously interesting book, written by Evans and Novak, the conservative reporters. Evans has passed away. Novak is still writing, as he has for many years. He is an excellent writer. I didn't realize, until I had occasion to visit with Bob Novak a few weeks ago, that he and Evans had written a history book in 1967 dealing with the life of Lyndon Johnson. I am in the process of reading that book. I am probably about halfway through the book. It is tremendously interesting. For those of us who read the Caro work, I recommend the book by Novak. It is very readable. They were there at the time. The things that went on, for example, in the Civil Rights Act of the late fifties—our colleague Strom Thurmond debated that matter. He stood up himself in a filibuster. Senator HATCH, my friend from Utah, talks about real filibusters. That was a real filibuster. Senator Thurmond alone spoke for more than 24 hours.

It really threw the southern coalition off because they, in effect, made a deal with Lyndon Johnson and Strom Thurmond. It threw a monkey wrench into the so-called deal. Anyway, it is very interesting.

History is living what took place in the past. For us, it is the ability to learn from what has happened in the past to try to do a better job in the future.

My friend from Tennessee, wrote this legislation, and I am happy to work with him on it; it is great. The legislation sets up academies. It sets up programs on the Internet for best teaching practices. The education of America's children must be one of our top priorities.

Our schools have several important goals, including providing students with a foundation for higher education, helping them develop individual potential, and preparing them for successful careers.

America has been a nation of immigrants for hundreds of years, and our schools have helped instill in our diverse population a sense of what it means to be an American and prepare our youth for the responsibilities of citizenship. We need to reaffirm the importance of learning American history and acquiring civic understanding. That is what this legislation is all about.

As I work to make sure Nevada schoolchildren are connected to the Internet and the future, I also want them to be connected with America's past and know the common values in history, binding together all who live in our great Nation.

I commend and applaud the junior Senator from Tennessee, LAMAR ALEXANDER, for offering this legislation. It is important legislation. He said in his statement that Senator GREGG, who chairs the committee of jurisdiction on this legislation, will move the bill to the Senate floor quickly. I hope that happens. I do hope my Republican colleagues will join with me in adequately funding this program so we can establish in grades K through 12 these academies where teachers can go to summer workshops and learn history and how better to teach history. It will only improve our country and our educational system in particular.

Under the previous order, the second 30 minutes shall be under the control of the Senator from Alaska, Ms. MURKOWSKI, or her designee.

The Senator from Alaska.

EXPRESSING SUPPORT FOR THE PLEDGE OF ALLEGIANCE

Ms. MURKOWSKI. Mr. President, I send a resolution to the desk and ask unanimous consent that it be held at the desk.

Before the Chair rules, I add that it is my hope, and the hope of many Members on this side of the aisle, that we can get this resolution cleared for adoption today.

The PRESIDING OFFICER. Without objection, the resolution will be held at the desk.

Ms. MURKOWSKI. I thank the Chair.

Mr. President, I am pleased to be joined by the Republican whip, Senator MCCONNELL, in introducing a resolution disapproving last week's Pledge of Allegiance ruling by the full Ninth Circuit Court of Appeals.

The full court refused to review a three-judge panel ruling that bars children in public schools from voluntarily reciting the Pledge of Allegiance.

Last week's decision is symptomatic of a court that has become dysfunctional and out-of-touch with American jurisprudence, common sense, and constitutional values. The full Ninth Circuit decision on the pledge represents a type of extremism carried out by individuals who want to substitute their values in place of constitutional values. What they want to do is simply eradicate any reference to religion in public life. That is not what the First Amendment mandates.

In his dissent from the court's decision, Judge O'Scannlain, writing for six judges, called the panel decision ''wrong, very wrong—wrong because reciting the Pledge of Allegiance is simply not a 'religious act' as the two-judge majority asserts, wrong as a matter of Supreme Court precedent properly understood, wrong because it set up a direct conflict with the law of another circuit, and wrong as a matter of common sense.''

He went on to say: ''If reciting the pledge is truly 'a religious act' in violation of the Establishment Clause, then so is the recitation of the Constitution itself, the Declaration of Independence, the Gettysburg Address, the National Motto or the singing of the national anthem,'' verse of which says, 'And this is our motto: In God is our trust.'' I believe the reasoning of Judge O'Scannlain is absolutely correct.

One should not be surprised that the full Ninth Circuit refused to reconsider this ill-conceived decision. The recent history of the Ninth Circuit suggests a judicial activism that is close to the fringe of legal reasoning.

During the 1990s, almost 90 percent of cases from the Ninth Circuit reviewed by the Supreme Court were reversed.

In fact, this is the court with the highest reversal rate in the country. In 1997, 27 of the 28 cases brought to the Supreme Court were reversed—two-thirds by a unanimous vote.

Over the last 3 years, one-third of all cases reversed by the Supreme Court came from the Ninth Circuit. That's three times the number of reversals for the next nearest circuit and 33 times higher than the reversal rate for the 10th Circuit.

Last November, on a single day, the Supreme Court summarily and unanimously reversed three Ninth Circuit decisions. In one of those three cases, the Supreme Court ruled that the circuit had overreached its authority and stated that the Court ''exceed[ed] the limits imposed on federal habeas review . . . substitut[ing] its own judgment for that of the state court.''

One of the reasons the Ninth Circuit is reversed so often is because the circuit has become so large and unwieldy. The circuit serves a population of more than 54 million people, almost 60 percent more than are served by the next largest circuit. By 2010, the Census Bureau estimates that the Ninth Circuit's population will be more than 63 million.

According to the Administrative Office of the U.S. Courts, the Ninth Circuit alone accounts for more than 60 percent of all appeals pending for more than a year. And with its huge caseload, the judges on the court just do not have the opportunity to keep up with decisions within the circuit, let alone decisions from other circuits.

In a New York Times article last year it was pointed out that judges on the court said they did not have time to read all of the decisions issued by the court. According to a 1998 report, 57 percent of judges in the Ninth Circuit, compared with 86 percent of Federal appeals court judges elsewhere, said they read most or all of their court's decisions.

Another problem with the Ninth Circuit is that it never speaks with one voice. All other circuits sit as one entity to hear full-court, or en banc, cases. The Ninth Circuit sits in panels of 11. The procedure injects randomness into decisions. If a case is decided 6 to 5, there is no reason to think it represents the views of the majority of the court's 24 active members.

Last week, some legal experts suggested that the Ninth Circuit's unique 11 member en bank panel system may have contributed to the courts' decision on the pledge. It has been suggested that even a majority of the 24 members of the court might have disagreed with the pledge decision but feared that a random pick of 11 members of the court to hear the case might have resulted in the decision being affirmed.

That is not the way the law should be interpreted by the circuit courts of this country. I believe this decision highlights the need for this Congress to finally enact legislation that will split the Ninth Circuit. It has just become dysfunctional.

Later this week I will be introducing such legislation, and I hope my colleagues on both sides of the aisle will join me in that legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I rise to join my colleague, the Senator from Alaska, in raising my voice in concern and dismay about the recent decision of the 24-judge U.S. Court of Appeals for the Ninth Circuit declaring the phrase ''under God'' in the Pledge of Allegiance to be unconstitutional. You have to ask yourself: What is the problem? Is the problem the pledge or is the problem the Ninth Circuit?

The distinguished Senator from Tennessee today in his maiden speech talked about what it is to be an American and made reference to this particular issue. The Pledge of Allegiance does speak to what is great about America, our sense of unity and—to quote the Senator from Tennessee—our sense of faith, our value of freedom. It is who we are as Americans that joins us.

If we reflect on the prayer that opened the session today, the pastor talked about prayer and whether it is Allah or whether it is Jesus, whether it is Yahweh, we are joined with a common sense in faith. Walking through the doors to the Chamber across from where the Presiding Officer sits is the phrase: ''In God We Trust.'' We acknowledge that. We accept that. We understand it is not the State saying this is State-sponsored religion. It is simply our recognition of faith as being part of who we are and that it is OK.

If I would take out a dollar bill, if I had one in my pocket, we would see reference to God. This decision defies common sense. It is because we have a court that substitutes its judgment, its own perhaps personal political perspective in ruling from the bench, and that is not what courts are supposed to be.

I speak as a former Solicitor General of the State of Minnesota. I understand the Constitution. I respect the Constitution. I revere the Constitution. Clearly, our Founders and Framers, in their brilliance, in their foresight, and I believe in their being divinely inspired, understood that it was in God we trust. A decision somehow that says it is unconstitutional truly defies common sense.

If I may, I think this decision highlights the importance of confirming Miguel Estrada to the Second Circuit Court of Appeals. I say that because if you look at the criticism that Mr. Estrada is getting from some of my distinguished colleagues on the other side, they are concerned that he is not articulating his personal political perspective on a given issue.

When Mr. Estrada is asked about legal precedent, he says: I will follow it if it is the established law of the land. That is what judges are supposed to do. They are not supposed to take their own personal political belief, a belief that may defy common sense, and bring it to the fore, in this case the Ninth Circuit Court of Appeals ruling that the phrase ''under God'' is unconstitutional.

When Mr. Estrada was asked about the divisive issue of abortion—clearly divisive, and I am one who would love to find common ground. I believe in America today there is common ground over banning the horror of partial-birth abortion. Most people find common ground.

On this divisive issue, when Mr. Estrada was probed and pushed to say what his personal beliefs are, he stepped back and said: It is the established law of the land. It is a constitutional right to privacy. It is not within the province or responsibility of a judge to bring their personal political perspective or belief to the table. To do that would constitute judicial activism. That is not what I believe the Constitution intended judges to be. They are supposed to interpret the Constitution.

I truly believe this decision of the Ninth Circuit Court of Appeals, which I am hopeful, if not confident, will be overturned—I am supportive of the efforts of the Senator from Alaska and this body speaking out and saying this is the wrong decision; this does not reflect common sense; this does not reflect American values.

This is the wrong lesson to be sending our children about what it means to be an American and the greatness of America. Clearly, we cannot have courts substituting their judgment. We cannot have decisions that are so devoid of common sense that they cut away at the core of the fabric and the heart of what it means to be an American.

I join in speaking out. I join in support of the resolution that says this is wrong, and the Senate recognizes it is wrong.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I rise to congratulate the Senator from Alaska and to associate myself with the remarks of the Senator from Minnesota. I mentioned a few moments ago that if our future Federal judges had a few more courses in American history and civics, we might not have these decisions.

I see the Senator from Alabama is in the Chamber. I think of the pivot point of the Revolutionary War when all the Europeans on the western side of the mountain in Tennessee were enraged. They were tired of paying taxes to support the bishop of a church to which they did not belong. So they helped fight the Revolution; that is separation of church and state. They did not want to pay taxes to support another church.

Before they went over the mountain to the Battle of King's Mountain in Watauga, they went down on their knees to pray. The great pioneer preacher, Samuel Doke, prayed about the sword of the Lord and Gideon. They knew how to separate church and state and still be a religious country. If they knew it, why don't Federal judges know it? Why don't they know that George Washington went down on his knees at Valley Forge, and that Abraham Lincoln turned the war over to the Lord, and General Pershing advised troops to pray? Did they not see President Bush take America to church after 9/11 and then walk across the street to a mosque?

We know how to be a religious country and separate church and state, and our Federal judges ought to know how to do that. I suggest one more lesson for teaching American history and civics in our public schools, as the Senator from Alaska suggests, is that we have more Federal judges grow up understanding we are a country that can be as religious as any country in the world and still separate church and state.

Those principles can work together.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. ALEXANDER. Yes, of course.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Does the Senator, based on his broad experience in affairs, conclude that this country has the unique history of being a genuinely religious country, but a country that knows how to handle different religions and faiths? As a matter of history, is it not almost unique in the history of the world how we have been able to affirm religious faith and, at the same time, avoid sectarian violence?

Mr. ALEXANDER. The Senator from Alabama is exactly right. One of the most remarkable aspects about America is we have a country that is filled with people from everywhere. If one goes to a naturalization ceremony in any Federal court in America and looks at the men and women coming into our country from everywhere, one will see the variety and diversity of our country. We know how to do that.

Our country is distinguished because despite our diversity, we do not have religious wars in our country. We respect everybody's right. The greatest aspect of our country is not all that diversity; it is the fact we figured out how to turn all that diversity into one country.

Federal judges need to know we have two principles running through this country: We have the Pilgrims who arrived here and saw the shining city on the hill, and we have the great diversity where we are more religious virtually than any country, but we separate church and state. When the chaplain starts every day here with a prayer, he is not establishing a church in the United States of America; he is recognizing the religious nature of our country, and judges should know that.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Alabama.

Mr. SESSIONS. I thank the Chair. Madam President, first, I appreciate the remarks of the Senator from Alaska. It was a very effective and thoughtful speech about a very important subject, and that is the Ninth Circuit Court of Appeals and how this Pledge of Allegiance matter highlights the problems we have had there for a long time. I express my appreciation for a wonderful analysis that the Senator from Alaska made. The Senator laid it out very well.

I chair the Subcommittee on Courts of the Senate Judiciary Committee. I have looked at this issue since I have been in the Senate. I was present in Atlanta the day the Eleventh Circuit Court of Appeals was created. The old Fifth Circuit Court of Appeals was divided. It went from Miami to Texas, from El Paso to Miami. It was too big and it could not work well. The judges themselves believed that a division was necessary. The Congress approved. Not one single judge today who is on the new Eleventh Circuit and was on the old Fifth Circuit, would ever want to try to put that monstrosity back together. And it was not nearly as big as the Ninth Circuit.

We had hearings several years ago during which we called chief judges of several circuits as witnesses. Those judges told us they did not want to see the size of their court get any bigger than 10 or 12 judges. When it got any bigger than that, collegiality broke down, the ability to maintain consistency of opinions broke down, and the ability to promote harmony and consistency in law broke down.

The Senator from Alaska is exactly correct, the Ninth Circuit is a particular problem. It is out of the mainstream of American law, and that is one reason I urged and pleaded with this Senate not to put more left-wing activist judges on the Ninth Circuit. I dealt with the question of Judge Marsha Berzon and Judge Paez. We did not filibuster those nominees. We debated those nominees. I voted against those nominees. Both of them were confirmed. Both of those judges, by all apparent indication, voted for this opinion that struck down the Pledge of Allegiance in this country. Both of those judges, Berzon and Paez, in separate opinions have voted to strike down California's three-strikes-and-you're-out law, the law that broke the back of a surging crime rate in California, and we have seen the crime rate go down. Why? Because they targeted repeat dangerous offenders. In a Rand Cor-

poration study of prisoners in California, the prisoners admitted they were involved in as many as 200 crimes per year. So when you target repeat offenders under the three-strikes-you're-out law, it brings the crime rate down. The Ninth Circuit has real problems. They have no business striking down California's law. California has a right to set the penalty standards in their State.

The problems in the Ninth Circuit are broadly known. Several years ago, the New York Times, in a piece on the problem, noted that a majority of the United States Supreme Court considers the Ninth Circuit to be a rogue circuit, a circuit out of control. One year they reversed the Ninth Circuit 27 out of 28 times. Another year it was 13 out of 17 times. They have the highest reversal rate of any circuit in America. But to have so many cases, there is no way the Supreme Court of the United States can control that circuit, unless it is under control to begin with. We need judges there who follow the law.

This is precisely why, as Senator COLEMAN indicated, we need judges like Miguel Estrada who show restraint. That is what this debate is about. That is what the President is committed to do. He said we are not going to turn criminals loose without a basis. We are not going to be taking down the Pledge of Allegiance. We are not going to be taking down Christmas decorations because of these nutty decisions coming out time and time again. Many of these decisions are under the guise of interpreting the Constitution in ways it has never been interpreted before.

That is what this debate is about. That is why it is important. We need judges who will simply follow the law. Who can be afraid of that? How is our liberty endangered when we have judges who follow the law dutifully? What you have when you have a judge like Judge Reinhardt on the Ninth Circuit, who says that evolving, long-term trends of social conscience enable judges to redefine the meaning of the Constitution to make what they think is correct occur, is very dangerous policy. In fact, that idea undermines democracy.

I could go on and talk about this circuit. I have made probably as many as nine speeches on the floor delineating the problems they have. I strongly believe that reform is needed. I thank the Senator from Alaska for raising that again. Her State is part of the Ninth Circuit. I know she cares deeply about it. We have had a number of proposals to fix it. The way the opponents of reform operate, and the way I have seen them do it, is whatever the proposal is, is not good enough. So they don't deny we need reform, but any time somebody proposes reform, they come along and say it isn't correct, and they turn it into a confused mess.

But it is time for us now to confront this issue, it is time for us to confront the problem of judicial activism in its entirety. Unfortunately, the Pacific coast has drifted further than any from being a disciplined interpreter of the law. So I will just say, Madam President, thank you for your leadership, thank you for your important first speech. I believe it will help us go forward. It is going to encourage me to push the issue in my committee. So I thank the Senator from Alaska. I look forward to working with you and others who sincerely want to improve the rule of law in America, who want to improve consistency in the rule of law to avoid decisions that embarrass this country, and embarrass the rule of law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Madam President, I congratulate the Senator from Alaska who has kindly taken the chair so I may speak briefly in support of the resolution that she and Senator MCCONNELL have offered this morning.

The reason I do so is that I think we see a remarkable confluence of themes this morning. First, as we know, we are in the fourth week of debate on the nomination of Miguel Estrada to the DC Circuit Court of Appeals, and the debate has often been about what is the proper role for a judge to play under our Government of separated powers, where the legislative branch, executive branch, and judicial branch play distinctive roles, not the same role.

Then we heard from the distinguished Senator from Tennessee this morning offering a bill sponsored on a bipartisan basis, trying to put history and civics back in our classrooms so that American children can grow up knowing what it means to be an American. And then we have this sad, but not totally unexpected, incident of the Ninth Circuit's refusal to reconsider the three-judge panel decision striking the words ''under God'' from the Pledge of Allegiance. I think these three themes are connected. I want to speak briefly on that.

Madam President, I rise this morning, after an entire month of Senate debate on the nomination of Miguel Estrada to serve on the Federal court of appeals, in continued dismay over what I see as a politicization of our judicial confirmation process. In my view, it is profoundly dangerous to have a judicial confirmation process that, in effect, tells nominees their personal political beliefs will determine whether or not they get to serve as a judge. Such a judicial confirmation process sends exactly the wrong signal and a dangerous message to judges that it is perhaps OK to decide cases based on their personal beliefs, or a political and social agenda and not based on settled law.

Indeed, Miguel Estrada, during the course of these debates, has been criticized. When asked what his judicial philosophy is, he said: I will apply the law as written by the Congress and as decided by precedents of the U.S. Supreme Court. One Senator said: Well, that is not a philosophy. I want to know how Mr. Estrada personally feels about the equal protection clause, about the fourth amendment, the first amendment, and such questions. But, indeed, I think the Senator has it exactly wrong, and Mr. Estrada has it exactly right. It is the judicial philosophy we ought to embrace and look for.

Indeed, I believe the President has chosen a nominee who says I won't impose my own views or my own political agenda, or what I think the law should be; I will submit to the law of the land, which is what Congress has said the law is, through the laws that are passed and signed by the President, and the decisions made by a higher court and the precedents so established.

Madam President, the Ninth Circuit's decision last Friday to strike down, for a second time, the voluntary recitation of the Pledge of Allegiance as unconstitutional demonstrates exactly what will happen when we politicize the judiciary. It demonstrates what happens when we tell judges you can ignore the law, because what is really important is how you personally feel about these issues. The Ninth Circuit's decision on the Pledge of Allegiance is without any basis in law or in fact. It is a blatantly political decision.

As one of the judges noticed in his dissent, ''it doesn't take an Article III judge to recognize that the voluntary recitation of the Pledge of Allegiance in public school does not violate the First Amendment.'' Surely, he is right. Heaven help us if he is not.

The First Amendment of the Constitution states that ''Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'' These words represent a solemn commitment by our Founders, indeed by all of us, that our Government cannot interfere with the ability of an individual to practice his or her faith or express it in a public forum—no more, and no less. Government shall neither establish an official State religion, nor shall Government interfere with the ability of private citizens to exercise their chosen religion.

Notice what the first amendment does not say. It does not say the Government must be hostile to religion. But, indeed, is that not what has happened? I think about our children and what they are exposed to on a daily basis: Sex, violence, degradation of women, other dangerous influences. And we expect them to sort that out in their own way, hopefully under the guidance and tutelage of parents, teachers, and others.

The one thing people cannot talk about, they cannot talk about the Creator, they cannot talk about their religious faith. That is prohibited. And that is absurd.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CORNYN. Madam President, I ask unanimous consent that morning business be extended by 5 minutes on this side of the aisle and likewise extended on the other side of the aisle.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CORNYN. As Justice William O. Douglas explained in his decision in Zorach v. Clauson, ''[t]he First Amendment . . . does not say that in every and all respects there shall be a separation of Church and State. . . . Otherwise . . . [p]olicemen who help parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls,'' such as we observed in this Chamber this morning and do every time the Senate meets, ''the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; 'so help me God' in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment.''

The Founders of the Constitution did not ratify a Constitution or a Bill of Rights so hostile to religion. To the contrary, the very first day that the first Congress approved the Establishment Clause, it also passed the Northwest Ordinance which declared that ''religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.''

Our Founders thus believed this new Nation could endorse and promote religion and encourage its citizens voluntarily to practice the faith of their own choosing. They are not mutually exclusive.

The Ninth Circuit's decision to strike down the Pledge of Allegiance finds no basis in the text of the Constitution or the original understanding of our Founding Fathers. Indeed, it defies common sense.

I urge this body to support the resolution offered this morning by the Senator from Alaska and the Senator from Kentucky because the Ninth Circuit's decision, like far too many decisions coming from our Federal courts, replaces the Constitution with an altogether new and made-up rule preferred by judges who may personally prefer a government that is actively hostile to all expressions of faith in a public forum.

I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). Under the previous order, the final 60 minutes shall be under the control of the Democratic leader or his designee.

The Senator from Oregon.

STANDING UP FOR THE CONSUMER

Mr. WYDEN. Mr. President, gasoline prices are soaring through the stratosphere, and the Federal Trade Commission, which is supposed to be standing up for the consumer, ought to stop playing footsie with the oil companies and take steps to protect the American people. I have been trying to get the Federal Trade Commission to do its job now for several years. In fact, I have supplied them with detailed reports outlining anticompetitive practices in the oil industry in hopes that I could get their attention. Unfortunately, they are still sitting on the sidelines.

This morning I will outline what some of those anticompetitive practices are that the oil companies are now using to victimize the American consumer.

The oil companies are redlining. What they have sought to do is keep independent wholesalers known as ''jobbers'' from competing in markets by refusing to let independent dealers buy better priced gasoline from the local jobbers. This is a technique to wall off whole communities from competition. Redlining is going on today.

The oil companies are also zone pricing. They charge different prices for the same gas at their own branded stores in adjacent neighborhoods, pricing it as high as the market will bear. They have also charged independent dealers higher wholesale prices than they charge the company stores. The end result, the independents cannot compete.

So what we have in communities across the country is two stations that are located next to each other, and because of a Supreme Court decision, oil companies are required to treat those companies similarly situated in the same way. But what the oil companies do very cleverly is divide that community into different zones. Then they can stick it to one of the stations. That station goes out of business. There is a local monopoly and the consumer gets hosed once again.

A third area I have outlined for the Federal Trade Commission is that the oil companies keep the market to themselves. In the past, they have kept down refineries that could have increased supply and introduced new competition. We have given this information to the Federal Trade Commission and, again, they sit on their hands.

Finally, of particular importance to west coast consumers, where up and down the west coast of the United States prices have soared, people are paying $2 a gallon and close to it in many communities. What we have seen in the past is the oil companies have exported gasoline to Asia at a discount and then more than made up for it by sticking consumers with higher prices in the tight west coast market.

The oil companies today would say they are no longer doing this, but the fact of the matter is that oil company representatives told my Oregon colleague, Senator SMITH, who has worked with me so cooperatively on many of these issues, in an open hearing in the Commerce Committee that they would export to Asia once again whenever it was in their commercial interest. So hypothetically, if they were allowed to drill for oil in the national wildlife refuge in Alaska, apart from the environmental considerations, based on the testimony in the Senate Commerce Committee, the oil companies would be taking that oil from the wildlife refuge, selling it to Asia at a discount and sticking it to people in Oregon, Washington, and California.

It seems to me the Federal Trade Commission ought to be taking steps to stand up for the consumer. If they do not think they have the authority to stand up for the consumer at this point, they ought to come to the Senate and tell us what authority they actually need in order to protect the consumer and the gas-buying public. The unfortunate response from the Federal Trade Commission has been to simply sit this issue out.

For example, on July 17, 2002, in a hearing before the Senate Commerce Committee, I outlined once again for the Federal Trade Commission these anticompetitive practices. I went through with them the impact of redlining, of zone pricing, of the pressure that has been put on independent gasoline stations. I asked them to furnish for the record any set of concrete steps they have actually taken to protect the consumer.

We cannot find anything. We cannot find any specific action the Federal Trade Commission took, either before July 17, 2002, when I asked them that question, or since then. I am very troubled because I think the problems we are seeing today, and they are long-term problems, cry out for someone in the Federal Government to stand up for the consumer. It is the job of the Federal Trade Commission to deal with anticompetitive practices. These are long-term, anticompetitive practices that are siphoning the competition out of the gasoline markets in the United States.

I hope the Federal Trade Commission will either do its job under existing law—I think they have the authority to deal with these anticompetitive practices—or if they do not believe they do have the authority they need to protect the consumer, they should come to the Senate and outline what powers they need in order to stand up for the American people.

Essentially, both of the reports that I did and have submitted to the Federal Trade Commission found the very same thing. They found that the oil companies were engaging in anticompetitive practices. I hope now, given the enormous impact these huge gasoline price spikes are having on consumers, the ramifications for business—we had scores of businesses and business associations contact us in the past—that we can get the Federal Trade Commission off the side lines. They have a job to do. They are not doing it with respect to protecting the American people from anticompetitive practices in the gasoline businesses.

I intend to keep coming to the floor and the Senate Commerce Committee until the Federal Trade Commission is prepared to do its job.

I yield the floor.

The PRESIDING OFFICER (Mr. ENZI). The Senator from Michigan.

MEDICARE

Ms. STABENOW. Mr. President, I rise today to speak about the plan the White House is unveiling today concerning Medicare and prescription drugs. I am surprised and dismayed to see we have basically the same old thing being proposed once again by the administration. While we hear the right words about wanting to make sure every senior has access to prescription drugs, one more time we are seeing the President say one thing and do another.

In January after the State of the Union, many were dismayed to hear that the President's proposal for Medicare prescription drug coverage would basically be one that would say to a senior, if you stay in traditional Medicare, Medicare that has worked for you every day, every year, guaranteed access to your doctor, guarantee that you had health care available to you—if you chose to stay in Medicare, which has been working since 1965, you would not get any assistance with your critical prescription drug costs; you would have to go into a private sector HMO.

Now we hear that is not really the plan, that is not really what was going to happen. Last week, Secretary Thompson came to the Budget Committee. I questioned him about that. No, there was no intention to say that seniors would have to go into a private sector HMO in order to be able to get critical help; everyone would have help.

Today we find out that, again, that is really what they are talking about: Small change, cosmetic change, to attempt to address concerns that have been raised on both sides of the aisle by very prestigious Members of this body who are concerned that every senior has Medicare, every senior has the right to make sure that plan covers prescription drugs and gives them help with their medicine.

What do we see? We see a proposal that says if you stay in the plan that works for every senior—40 million people in Medicare now—if you stay in that plan, we will give you a discount card which the GAO says does not nearly produce the savings spoken about frequently. Less than 10 percent savings. You have to make sure you are going to the right medicine, have the right medicine, and heaven forbid if you need more than one kind of medicine from more than one company because then it does not work so well. But we will give you a discount card. Then maybe down the road a number of years, we will help you, if you have a very large prescription drug bill, with what is called catastrophic help.

To add insult to injury, the discount card is being proposed to take effect in 2004—not even immediately, when we know there are discount cards available on the market now. The major companies all have discount cards. The President is saying the discounts card will not be available until 2004 and the rest of the plan, not until 2006.

The first thing I say today—and I know my colleagues hear the same thing I hear—seniors believe they have waited long enough. We have talked about this issue. I have been involved in efforts to get prescription drug coverage under Medicare since I was in the House of Representatives. Certainly seniors have been speaking about that long before. They want us to provide help now, and they are not interested in something that forces them into another kind of plan, a private sector plan. They want Medicare to simply cover prescription drugs.

Frequently we hear used the words: Choice. This kind of plan will provide more choices for our seniors. If we have more private sector HMOs, there are more choices.

What I hear from my great State of Michigan is not that people want more, different kinds of complicated insurance plans to figure out. That is not the choice they are asking for. The choice they are asking for is the choice to go to the doctor they choose, their own doctor, who can prescribe the medicine they need. That is the choice they want. It is very clear. The seniors of America have already spoken on this issue with their feet. The majority when given the choice of going to an HMO under Medicare+Choice, said no and stayed in traditional Medicare. That is the reality. Seniors were given a choice about whether or not to keep the stable, reliable, Medicare plan that has been in place since 1965 or go to a private sector HMO. They stayed with Medicare.

Now the President is saying: Even though you made that choice, we are going to give you another choice, and we will penalize you this time. Last time, you could choose, stay in traditional Medicare or do Medicare+Choice; this time, because we did not like the choice you made, we are going to say you cannot get comprehensive help if you stay in traditional Medicare. You have to go into a private sector HMO in order to get the help you need and the help you deserve.

When looking at this issue about the private sector HMO approach or Medicare+Choice, we also have a situation where in 12 States there are no private HMO options under Medicare. In my home State, where people did sign up—and I have said before, my mother signed up and had a positive experience under Medicare+Choice with her HMO. But the HMO dropped Medicare beneficiaries. She got dropped a couple of years ago because they believed it was not profitable because of concerns about reimbursements. So now in Michigan only 2 percent of those who are receiving Medicare are in an HMO, and they are not enrolling any new people. You had better live in the eastern part of the State of Michigan or you do not have that as a choice.

If one resides in the great city of Marquette or Iron Mountain in the UP or Sault Sainte Marie or on the west side of the State where the President visited after the State of the Union, in Grand Rapids, MI, to talk about Medicare, in that community where the President visited, we certainly welcome always having a President come to town, but no one listening at that speech would have access to a private sector HMO under Medicare. So we have a situation where it is too little, it is too late, and this is an effort basically to force seniors into an approach the majority of them have already said they do not want.

Another piece I am very concerned about is that as we look at prescription drug coverage, it is not just about comprehensive care under Medicare; it is about lowering prices. It is about lowering prices for everyone: For the business that is paying for prescription drug coverage, that has seen their health care premiums skyrocket, businesses large and small; for families, workers who are affected, as well as for seniors. I am disturbed that this plan does not say anything about more competition to lower prices. In fact, while seniors are waiting until 2004 for a discount card that will have very little effect in lowering their prices—while they are waiting, the fastest way the President could join with us to lower prices would be to simply drop the barrier that stops Americans from going to Canada to get American-made, American-subsidized prescription drugs at half the price.

If we did that today, tomorrow we could drop prices, many of them in half, and in some cases even more. That is a proposal that passed the Senate last summer on a strong bipartisan vote. I am hopeful we will see that happen again this year; that we will once again say we need to drop that barrier.

We are in a free trade economy. We have agreements with Canada. Their health care system, in terms of quality controls and the other issues of safety we are concerned about, is very similar to those of our country. If we want, we can say to seniors, you do not have to get on a bus now and go to a Canadian doctor or Canadian pharmacy to get an American drug at half the price; we will open the border and get you that right here at home.

That is the fastest way to lower prices. The next fastest way is to close loopholes that allow brand name drug companies to stop unadvertised brands from going on the market—often called generic drugs. It is the same drug, frequently, the same formula. The difference is we are not seeing it on television every other minute. We are seeing generic drugs come onto the market that are available and in some cases can lower prices up to 50 percent, or we have seen prices lowered up to 70 percent as a result of the use of generics. There is no mention of that here.

I commend the President in coming forward with a proposal regarding generic drugs that has made some inroads. We appreciate it. They have

gone about half the way. Now we would call upon the President to join with us to go all the way to address the issue on generic drugs, and to work with us to pass the bill that has been introduced by my colleagues Senator MCCAIN and Senator SCHUMER, again a bipartisan bill, that would in fact put more competition into the system and lower prices—not only lower prices for our seniors under Medicare but lower prices for those covered in the private sector, thus bringing down the costs to businesses large and small.

I am disappointed we do not have in this proposal an effort to support our States, our Governors—Democrats and Republicans—who indicated last week that health care costs and Medicaid costs are a top priority for them. It is a large part of their budgets as they are struggling under a weakened economy. Many States, including my own Michigan, have been innovative, want to come together with other States to do bulk purchasing of prescription drugs in order to get discounts, bigger discounts than you can get through a discount card, to lower prices. We have seen States such as Maine and Vermont that have come forward with innovative plans to lower prices, each time being challenged by the brand name industry. In every situation the industry is suing or lobbying or doing something to stop competition in innovation in lower prices.

We had a plan as well. Part of our bill, S. 812, which we passed last summer, was a bill to address more generic drugs, at the same time opening the border with Canada, and also supporting the States that have been innovative in coming forward to try to lower prices for their citizens. There is no mention of that in this plan as well.

So we do not see anything addressing any of those issues. We see nothing in here addressing the concerns that there is more advertising money now spent by companies than research money—2½ times more being spent on advertising of the brand name drugs than on researching of new cures. We are seeing that drive up the costs as well, the explosion in sales and marketing and advertising.

Also, there is no mention of the fact that we are paying for a system where the majority of patents now are not for new breakthrough drugs but for what are called ''me too'' drugs. Basically 65 percent of patents in recent years are patents for drugs that have very little change in health value but just extend the patent so generics cannot go on the market and there is less competition.

There are so many ways we can be working together to lower prices—for employers to create a situation where employees are not being asked to take pay freezes so their employer can pay for the costs of health care; lower the prices for the uninsured, who pay the top price; and particularly our seniors. Right now in our country if you are an American senior and you walk into the local pharmacy and you do not have insurance, Medicare does not cover it. You pay top dollar of anybody in the world for your medicine. That is not an exaggeration. Americans pay top dollar of anybody in the world, and if you are uninsured, you pay the top.

We are back again talking about these issues of how to provide real Medicare coverage and at the same time lower prices for everyone. There were comments about what was going to be proposed by the President. Then there were indications from the administration that, no, in fact they were going to be putting forward something that would help everyone and not force people into private sector HMOs. Unfortunately, again we see one thing being said and another thing being done.

I hope my colleagues in the Senate will come together and we can fashion what really needs to happen. Again, our seniors are not asking for more choices about complicated insurance policies. They are not asking to wade through more options in terms of private sector HMOs. When they had the chance to pick between staying with traditional Medicare or going to an HMO through Medicare+Choice, the vast majority of older Americans and the disabled said no. They said no, we will stay with traditional Medicare.

Now that they have said no voluntarily, the White House has decided to come back and create a situation where, if they need help, they will be forced to go into a plan they said no to when it was voluntary.

I think the people of this country are going to see what this is. I think the seniors are going to understand what this is, and overwhelmingly reject this kind of an effort.

I hope we in the Senate will reject this kind of a proposal and that we will come together and be willing to roll up our sleeves and do the business of simply designing a plan under Medicare where 40 million seniors and disabled have the ability to come together under one plan and have the clout to lower prices and get that group discount for seniors; so they have something that is stable, where everyone knows what the premium is; so everyone knows what is covered; so it is reliable; so it doesn't matter if you live in the upper peninsula of Michigan or Benton Harbor, Saint Joe, or the city of Detroit, you would know and you would have it available to you. You could count on it. That has been the strength of Medicare. It has been there for everyone, and our older Americans can count on it. They are asking for us to simply do the same thing and design prescription drug coverage. Unfortunately, what we are hearing about the White House proposal is woefully inadequate.

I urge my colleagues to immediately reject the proposal and give us an opportunity to work together on something that we know we can do that is best.

Thank you, Mr. President. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENZI). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE SO-CALLED MOSCOW TREATY

Mr. DORGAN. Mr. President, I understand that perhaps today or tomorrow we will have a so-called Moscow Treaty brought to the floor of the Senate for debate. It is a treaty that has its origin in some discussions between our Presidents and the leader of Russia about the issue of nuclear arms and the reduction of nuclear arms.

I want to say I will vote for this treaty, although I must say it is not much of an agreement and not much of a treaty at all. I don't see any reason someone would vote against it. But I make the point that this is an agreement between two countries—both of which have large stocks of nuclear weapons—to reduce their number of nuclear weapons by taking some and putting them in warehouses and storage facilities and at the end of the process both countries can keep the same number of nuclear weapons they had when they started.

No nuclear weapons under this agreement will be destroyed, dismantled, or defused.

And This treaty deals with only strategic nuclear weapons, not theater nuclear weapons. There are thousands and thousands of theater nuclear weapons, such as the nuclear weapons that go on the tips of artillery shells. That is not part of this agreement. It has nothing to do with this agreement.

Strategic nuclear weapons are the very large warheads that one would put on the tip of an ICBM, for example, or to have in the belly of a bomber, or perhaps on the tip of a missile that is in a submarine. Those are the strategic nuclear weapons.

Between our country and Russia, there are perhaps 10,000, maybe 11,000, strategic nuclear weapons. So you have thousands on each side. Should we be reducing them? Of course. Absolutely.

But we have a circumstance now where there is a treaty, or an agreement, with Moscow in which, between now and the year 2012, we all the US and Russia have to do is take nuclear weapons and put them in storage. So each side, in the year 2012, can keep if it wants exactly the same number of nuclear weapons. Not one nuclear weapon that exists today needs to be destroyed in the next 9 years—none.

I do not understand that. I guess it is fine to have agreements just for the sake of having agreements, but of what value?

We have had examples of effective reductions of nuclear weapons and also delivery vehicles. I have mentioned them in the Chamber on many occasions. Let me do so again.

There is a program called the Nunn-Lugar Program, which is named after former Senator Sam Nunn and our current distinguished colleague, Senator LUGAR. It is a program that I very strongly support. It makes a great deal of sense. That program actually destroys nuclear warheads and delivery systems that are made excess through the various arms control treaties.

For example, in my desk I have a piece of metal which I would like to show by unanimous consent.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. This piece of metal belonged to a Soviet bomber. This was part of a wing strut on a Soviet bomber. Presumably, this bomber, belonging to the Soviet Union, carried nuclear weapons that could have been dropped on a target here in the United States of America.

How is it that a Senator on the floor of the Senate has a metal piece from a Soviet bomber? Well, simple. This bomber had its wings sawed off and its fuselage destroyed. How? The U.S. paid for it. We did not shoot the bomber down. This was not the result of hostilities. This was the result of an agreement between our country and the old Soviet Union, now Russia, to actually reduce delivery vehicles, bombers, missiles, submarines, and to actually reduce the number of nuclear weapons.

So that is how I come to hold in my hand a piece of metal that belonged to a Soviet bomber, and then Russian bomber, that would carry nuclear weapons that would have threatened this country.

Mr. President, I show you this little tube of ground copper. This used to be in a submarine that carried nuclear weapons on behalf of the old Soviet Union and then Russia. Those nuclear weapons were all aimed at this country, thousands of them. Well, this submarine does not carry nuclear weapons anymore. It was dismantled and destroyed. And I have here, on the floor of the Senate, a piece of ground up copper from the wiring of an old Soviet submarine.

That makes a lot of sense to me. We are actually reducing the threat by reducing the number of delivery vehicles, bombers, submarines, missiles, and dismantling the number of warheads.

We have been engaged in that for the last 10 years or so. And I would like to especially say my colleagues, Senator LUGAR and Senator Nunn, proposed a program by which we did not have to sink a Soviet submarine and we did not have to shoot down a Soviet bomber in order to destroy weapons of mass destruction and their delivery vehicles. We paid for their destruction with large circular saws and with devices in shipyards that destroyed their submarine by agreement.

By contrast, the agreement that comes to the floor of the Senate this week is kind of a marshmallow. It does not do anything. It is full of air. It says: Oh, let's have each side put more of their nuclear weapons in storage and then pretend we have reduced the number of nuclear weapons. Well, I thought pretend was all about children's books; it is not about the serious business of nuclear arms control.

There was a rumor, some long while ago, that a terrorist organization had stolen a nuclear weapon and was set to detonate it in a U.S. city. The interesting thing about that rumor was that the intelligence community did not view it as incredible that a nuclear weapon could have been stolen. After all, there where thousands and thousands and thousands in the world, most possessed by two countries—ours and also now Russia.

So our intelligence community did not believe it was an incredible threat. They believed it was entirely possible someone could have stolen a weapon, particularly from the Russian arsenal that does not have great command and control, I have heard and I have been told. And secondly, it was not something beyond the bounds of reality that, having stolen a nuclear weapon, a terrorist organization would know how to detonate it or could detonate it.

If ever there needed to be a sober moment, that was it.

For us to think that the potential stealing of one nuclear weapon, and put in the wrong hands—the hands of terrorists—would threaten this country, or any city in this country, ought to lead us to understand that if we are worried about one nuclear weapon, we ought to be worried about thousands and thousands and thousands of nuclear weapons.

With both strategic and theater nuclear weapons, there are perhaps as many as 25,000 to 30,000 nuclear weapons in this world. And what are we going to do this week? We are going to come and talk about how we shuffle the inventory of nuclear weapons from one place to another, destroying none of them, and then saying: We have an agreement. What a great agreement. By the year 2012, we will have moved nuclear weapons into storage facilities. And the world is safer.

Oh, really? How?

At the same time all of this is occurring, there is a fundamental shift occurring, in addition, with respect to the discussion about nuclear weapons. This administration says: We do not want to continue the antiballistic missile treaty—which has been the center pole of the tent of arms control.

Instead, this administration says: We want to talk about and consider the possibility of developing new designer nuclear weapons; for example, bunker buster nuclear weapons.

This administration, and many in this Congress—too many in this Senate—said: We do not support the Comprehensive Nuclear Test-Ban Treaty—despite the fact that we have not tested a nuclear weapon for well over a decade.

There is a fundamental shift going on. This administration has said: We have not ruled out the use of nuclear weapons in certain circumstances. I will not go into them, but they have been in the newspapers.

I think our responsibility—of all countries in the world—is to be a leader in trying to reduce the number of nuclear weapons in this world, and to try to convince everyone and anyone that no one shall ever again explode a nuclear weapon in anger.

Pakistan and India both have nuclear weapons. They do not like each other. They have been exchanging weapons fire across the border with respect to Kashmir. Both have nuclear weapons. Do we want, in any way, to signal that the use of nuclear weapons, in any circumstance, is appropriate? Do we want to signal that we actually have a desire to begin producing new types of nuclear weapons, such as bunker buster nuclear weapons?

I think this country has chosen the wrong path with respect to these policies. We ought to be debating on the floor of the Senate something that has grip to it, something that says: Look, as a world leader, it is our determination to stop the spread of nuclear weapons, and to stop the spread now. And we are going to do that.

We ought to be saying: It is our judgment that we want to reduce the stockpile of nuclear weapons in this world. And we want to be a leader in doing that. We just have to assume that leadership responsibility.

A PRESCRIPTION DRUG BENEFIT FOR SENIORS

Mr. DORGAN. Mr. President, having said that, I want to mention two additional quick items.

We have had a discussion, and will have a discussion, about the subject of Medicare. It will be a significant issue in this Congress, and should be. We have been talking, for a long while, about the health needs of senior citizens who do not have access to prescription drugs because they are too expensive. Too many senior citizens are told: You must take prescription drugs for these ailments you have; and they discover: Well, I can't take prescription drugs. I don't have the money.

Republicans and Democrats have been debating how to add a prescription drug benefit to the Medicare plan. Today I see the President is going to send us a proposal that says we would like to give everybody a discount card who would qualify under Medicare, and then say to others, if they want to get some real help for real prescription drug coverage, they have to join an HMO or a managed care organization. That doesn't make any sense to me as a matter of public policy. We need to put downward pressure on prescription drug prices first and foremost.

Second, I believe we ought to provide a prescription drug benefit in the Medicare Program. If we were writing that program today, we would do that. I

don't think we ought to hinge that on the requirement that someone join an HMO.

I have been in the Chamber telling stories for 3, 4 years about what is happening to HMOs. Some of them are wonderful. But the construct of an HMO says to a senior citizen: By the way, here is your doctor. We will choose your doctor. You don't get to go to the doctor of your choice. Here is the doctor available for you. By the way, in too many circumstances, we have seen that in many of those organizations, major health care is a function of profit and loss.

I told the story, when we debated a Patients' Bill of Rights, about an HMO. A woman fell off a cliff in the Shenandoah Mountains. She was injured badly, had a long fall, broke many bones, had internal injuries. She was taken to a hospital in a coma. As she was wheeled into the hospital room on a gurney, there was a question whether she would survive. She did survive. It took a long while. Month after month, she finally convalesced and survived.

Her HMO told her: We will not pay for your emergency room treatment because you didn't have prior approval for emergency room use.

This is a woman hauled into the emergency room in a coma and was told: You don't get paid for the emergency room because you didn't get prior approval. Is that nuts? Of course it is. That is exactly what happened to this woman because somebody was looking at her in terms of profit and loss. That is not the way someone's person or body should be presented in the medical system. This is not profit and loss. It is about saving lives.

To say to senior citizens we will help them with the cost of prescription drugs but only if they go into an HMO or a managed care organization does not make much sense to me. This Congress can do better than that. We must do better.

TRADE DEFICIT

Mr. DORGAN. Mr. President, I also want to mention something I talked about yesterday. That is on the subject of the trade deficit. My colleagues know that we face a fiscal policy budget deficit of well over $400 billion this year, and we also face at the same time the largest trade deficit in American history, $470 billion; over $400 billion in our budget deficit and $470 billion in our merchandise trade deficit in the past year. That is nearing $1 trillion in combined deficits for our country.

I don't know. I thought that we were about to enter a period of fiscal responsibility. Two years ago we had what was alleged to be surpluses as far as the eye could see. It was good times; following the 1990s, budget surpluses nearly forever. The fact is, now we see budget deficits that exhaust all of our patience as far as the eye can see; spending money we don't have, in some cases on things we don't need, year after year after year. It won't go away because we ignore it. We ignore it at our peril. We ought to deal with both.

We are preparing for armed conflict. Our thoughts and prayers go with those who wear this country's uniform. We face severe and stiff challenges in foreign policy with North Korea, Iraq, the threat of terrorism against our homeland, and the war against terrorism abroad.

At the same time that exists, we have an economy that is stuttering and in trouble. Then we are told that on top of fiscal policy, budget deficits of over $400 billion in this year, at a time when we increased defense spending by $45 billion, increased homeland security spending by over $30 billion, we are told at the same time by the President that he wants a tax cut of $675 billion over the next 10 years on a permanent basis.

I don't understand how that adds up. Then, in addition to that fiscal policy dealing with the Federal budget, we have these abiding trade deficits. Those deficits at their root are about jobs.

It is about jobs that used to be here that are no longer. Millions of people are out of work and their jobs are elsewhere. We have a large trade deficit with China. Most people don't know that our trade deficit with China is now over $100 billion a year. China sends us all their trinkets, trousers, shirts, shoes. They flood our market with Chinese goods. Then we try to get goods into China, and their markets are not very open to ours.

Our trade negotiators negotiated an agreement with China and everybody said we have a bilateral agreement with China. I don't know who negotiated it. I would love to get names and pictures so I could give them credit. They apparently, in a room with the Chinese, negotiated a circumstance that said, in the future, when we have trade with automobiles from the United States and China—and incidentally this is a country with 1.3 billion people who will need a lot of cars—when we have an agreement with China on the trade of automobiles, we will agree, our negotiators said, to allow China to have a tariff that is 10 times higher in China on automobiles than we will have on Chinese cars coming to the U.S.

Our Government said: We will agree to have a tariff on U.S. cars being sold in the country of China that is 10 times higher than the tariff that would be imposed on a Chinese car sold in the United States. Does that make sense? It doesn't.

My point is, the root of all of this is about jobs, about economic opportunity. Our economy is not going to get well unless it has some resurrection of strength in the manufacturing sector. We are, every day in every way, trading away manufacturing jobs.

The trade ambassador said: We are losing manufacturing jobs, but we have cable television.

I don't understand that at all. Where does a statement like that come from? We lose some manufacturing plant and pick up some cable television signals? Good for cable television. But the fact is, it is not a replacement for manufacturing. No country will remain a strong international economic competitor if its sector dissipates. That has been happening.

I talked yesterday about the workers abroad with whom American workers are required to compete: Those who make 14 cents an hour—and, yes, they do—at age 14, working 14 hours a day—yes, they do employ those people in some parts of the world. Then the product of their labor is sent to Pittsburgh, Denver, Los Angeles, Fargo, Topeka. It goes on the store shelf, and it is all about profit.

People say: Isn't that wonderful for the consumer to have a lower priced product? It is not such a lower priced product. It is just that the people who used to have the income to buy it lost their job when the plant went overseas.

I also made a mistake yesterday. I mentioned the companies that renounced their American citizenship to save on taxes. They not only moved their plant overseas, but they renounced their American citizenship so they could save on taxes. I talked about them becoming Bahamian citizens. I should have said Bermuda. I guess some of them become citizens of the Bahamas, but it is more typical that they became citizens of Bermuda. The Bahamas has a navy with 26 people—I guess that is the Bermuda Navy. I want to correct that. The Bermuda Navy has 26 people.

So if an American company that wants to become a citizen in Bermuda and renounce its citizenship runs into trouble someplace, and some disparate country out there decides to expropriate the assets of this company that used to be American, but is now Bermudan, my feeling is, when they say let's call out the navy, I think they should call Bermuda and say call out your 26-member navy.

One of these companies actually had one ship grounded on a sand bar near Cuba. Would you please call out the navy to help? That is what we ought to tell them to do the next time they need assistance.

We have public policies both in fiscal policy dealing with the Federal budget and in trade policies that are in desperate need of attention. There is no attention paid to it at all at this moment, except for some of us in the Congress who want to see if we can do a U-turn on some of these policies and put us back on track towards more economic growth and more jobs for this country. The sooner we get to that real debate, the better.

This economy of ours can't run on paper. It can't run on promises. This economy needs a shot in the arm by a Congress that is willing to stand up to these issues and say: Our fiscal policy doesn't add up.

I come from a very small school. My senior class was 9; 40 kids in all four

grades of high school in a town of 350 people that I came from. But there is only one way they teach math. They taught math the same way in that small school they teach it in the biggest and best school in the United States. That is, 1 and 1 equals 2, not 3.

I studied hard and I learned that. Some in this town with advanced degrees have decided that 1 plus 1 is 3. In fact, you can find it in the budget documents. The fact is, the American people all understand it is a mirage. None of this adds up. This is a tough time and it requires tough choices. I wish it weren't. I wish it was a time when we had unparalleled economic growth, when the economy was rebounding, the stock market was moving up, and everybody was employed. But the fact is that is not the case.

We face serious, abiding economic challenges. This President needs to send a program to this Congress and this Congress has a requirement, it seems to me—if this President won't act, the Congress has a requirement to act to say we need to put this country back on track. The current circumstances simply do not add up.

I used to teach economics in college for a couple years. Everyone talks about the business cycle. We have been hit with things in this economy that are pretty unparalleled. Some of us warned about this 2 years ago when the President proposed a $1.7 trillion tax cut. Some of us said maybe we ought to be a little conservative here. What if the bottom falls out and we run into tough times, or turbulence, or get some bad economic news? They said not to worry. We have blue skies as far as you can see, straight ahead—budget surpluses forever, the President said. We passed that—not with my vote—long-term permanent tax cut, and then immediately we found out we were in a recession. We got hit with the terrorist attack of 9/11, and we were at a war with terrorists; and we now have the largest budget deficits we have seen. We had the largest corporate scandals in history. All of this is coming together at the same time, at the same intersection, and the budget surpluses turned into deficits, and the deficits got bigger and bigger.

The President says the antidote is to give more tax cuts and make them permanent. It seems to me he requires all of us to say we all like tax cuts. It would be nice if nobody had to pay any taxes. Count me in. I expect my constituents would appreciate the fact they would not have to pay taxes. Part of the cost of what we do together as citizens in building roads, schools, and providing for the common defense—part of the cost of that is the taxes we must pay. What the President is proposing in his budget is, by the way, let's be a bit short next year—about $400 billion short—and we will charge it over to the kids. We will let the kids assume that role of paying for it. We will consume more than we are willing to raise, and we will let the kids pay it off some time later. That doesn't add up, either.

By the way, the President also says, well, the economy is fundamentally sound, we don't need to do much right now in terms of stimulus. The fact is, when we teach about the contraction and expansion side of the economy in the business cycle, you teach about confidence. The expansion and contraction side of the business cycle is all about confidence. If people are confident in the future, they do the following: Buy a house, buy a car, take a trip. They do the things that manifest their confidence in the future because they have a job and they feel good about the future. And that confluence of individual acts around the country creates the expansion side of the business cycle. But when they are not confident about the future, they do the opposite. They defer the purchase of that appliance for their home, or that automobile they were looking to purchase, or the home, or the trip. When they defer that purchase, the economy contracts. It is all about the confidence with which the people view the future.

At the moment, the people are not confident about the future. There is not a lot we can do about the mechanics of the economy, because now the lead stories are about war, so there will never be confidence until we get through this period. We cannot ignore what is happening in our country with fiscal policy, trade policy, and a whole series of issues that some apparently feel we should pretend are all right but, in fact, are not all right—are seriously amiss.

That brings me back to the point I started with. The agreement that will be on the floor of the Senate this week dealing with the Moscow Treaty is just another piece of pretend policy. Everybody will vote for it. Why wouldn't you? What is wrong with it? But it does nothing. It says the U.S. and Russia are going to reduce the number of nuclear weapons, not by getting rid of them, but by putting them into storage. So what does that do to make the world safer? The answer is nothing. Most people know it.

There is the other piece of responsibility that is required—yes, of this President and of this Congress—and that is to provide world leadership and reduce the number of nuclear weapons, reduce the threat of nuclear war; and stop the spread of nuclear weapons around the world. It is the President's and our responsibility here in Congress. We ought not to pretend that we are taking action that really has very little impact with respect to fiscal policy, trade policy, nuclear arms control policy, because that will not ensure the future of this country and will not give our children confidence about the future of this country or this world.

So, Mr. President, my hope and expectation is that we can make tough decisions and come together and decide, yes, if it is heavy lifting, it requires all of us to do it together. I am tired of ''let's pretend.'' That is what is happening all too often both at the White House and also here in the Congress. Let's pretend on nuclear arms policy. Let's pretend on fiscal policy and trade policy. That, in my judgment, is a foolish approach. We need to do better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. It is my understanding that morning business is going to end in a couple minutes; is that right?

The PRESIDING OFFICER. In about 2 minutes.

Mr. REID. Mr. President, I direct a question to my friend from Virginia. The Senator from Virginia is here and wishes to speak; is that right?

Mr. ALLEN. Yes, on the issue of Miguel Estrada.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and resume consideration of Executive Calendar No. 21, which the clerk will report.

The legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. REID. Mr. President, before my friend starts, we have other people who wish to speak who can come this afternoon. I am curious as to roughly how long the Senator wishes to speak.

Mr. ALLEN. I suspect 15 to 20 minutes.

Mr. REID. I thank the Senator.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Virginia.

Mr. ALLEN. Mr. President, I rise once again to support Miguel Estrada's nomination to serve on the United States Court of Appeals for the District of Columbia. Miguel Estrada is being treated unfairly by Senators on the other side of the aisle who continue to practice such blatant obstructionism in an effort to score petty partisan points. Indeed, the obstructing Senators are shirking, in my view, their duty by avoiding a vote on this gentleman, Miguel Estrada, who was nominated 22 months ago by President Bush.

This is not mere payback; it is an escalation in a bitter battle by the Senate Democrats to keep judges off this court who properly construe the Constitution and respect the laws duly enacted by the elected legislature. That is disappointing, and it is dangerous.

The Senate Democrats' filibuster is a recipe for endless gridlock and a terrible disservice to the American people and the administration of justice.

Our protracted debate on the nomination of Miguel Estrada to the Court of Appeals for the District of Columbia makes clear the importance of sound reasoning judges on our circuit courts. For example, look at the recent denial of a rehearing decision by another circuit court, the Ninth Circuit Court of Appeals. I object to the decision by the Ninth Circuit Court of Appeals which will strip the Pledge of Allegiance from classrooms and over 9,600,000 students in Western United States. This decision is a miscarriage of justice.

The majority opinion lacks a clear reading of the constitutional intent and the legal precedent, and there is clearly a lack of common sense. This decision, frankly, is an abuse of power by the majority of those judges who sit on the Ninth Circuit Court of Appeals.

We all know well the history of our Nation and the fundamental ideas of freedom, particularly those of religious freedom, which in Virginia we call the first freedom. It was because of the desire to worship freely, to escape religious persecution in European countries that many came to settle in the American Colonies, from Pilgrims to French Huguenots. From New England to Virginia to South Carolina, many came to settle in this country to get away from Europe, ruled in large part by monarchs who served not by any talent, quality, or the consent of the people, but, as they called it, divine right. That divine right was generally conferred upon them by the exclusive monopoly of one church. So there was a co-conspiracy of a monarchy and an exclusive religion.

In the Virginia Colony, it was the Anglican Church that was forced upon the people. Baptists, in particular, were forced to pay to that established church. Indeed, when they talk about the Danbury letter to the Baptists, the Baptists were very happy when Thomas Jefferson was elected President. If one looks at what is in the Virginia statute of religious freedom, which was the predecessor of part of the first amendment of the Bill of Rights in the U.S. Constitution, one gets a better sense of what religious freedom and the so-called establishment clause is all about.

I will read from article I, section 16, in the Virginia Constitution that still remains and, of course, is built upon Mr. Jefferson's statute of religious freedom which was also involved in the Virginia Declaration of Rights which became eventually the first amendment to the Constitution.

It reads:

> That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

That, in my view, is the full historical context, from the founding documents since Virginia first passed the Statute of Religious Freedom, of what the first amendment should be.

Obviously, the first amendment of our Constitution is but a few sentences, but this gives the historical and the legal grounding of the Statute of Religious Freedom.

We all know well the words written by Thomas Jefferson proclaiming our independence from the religiously oppressive British monarchy. These words allowed our young Nation to:

> Assume the powers of the Earth, the separate and equal station to which laws of nature and of nature's God.

These are words that tell all of us, as Americans, that all men are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. These words still stir our hearts. They inspire us to continue to build that shining city on a hill, to be that beacon of freedom, religious or otherwise, for people all around the world.

Our Constitution, the hallowed document, can be summed up by one word and one idea: Freedom. The Constitution and the institution and the formation of this Government to protect those God-given rights and those freedoms states that Congress shall make no law respecting the establishment of religion.

While some conveniently use this to perpetrate actions such as those we saw out in San Francisco last week, it is often forgotten that the Constitution just as clearly states that the Congress shall make no law prohibiting the free exercise thereof.

I feel confident that the scholarly Miguel Estrada, who was editor of the Harvard Law Review, would have views similar to the dissent written by Judges O'Scannlain and Ferdinand Fernandez. As Judge O'Scannlain notes in his well-reasoned and thoughtful dissent, this decision of the Ninth Circuit Court is wrong on many levels. It is wrong because reciting of the Pledge of Allegiance is simply not a religious act, as the two-judge majority asserts. The decision is wrong as a matter of Supreme Court precedent as properly understood. The decision is wrong because it denies the will of the people of California as expressed in section 52720 of the California education code, and it is wrong as a matter of common sense.

I trust the Supreme Court of the United States will grant a writ of certiorari and promptly hear and decide this case. I, of course, hope they will reverse it. Parenthetically, I support the resolution of Senator LISA MURKOWSKI of Alaska expressing support for the Pledge of Allegiance, and I ask unanimous consent that I be added as a cosponsor of that measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. In the realm of public education, the Supreme Court—and the Presiding Officer of the Senate right now is well aware of precedent in the various decisions the Supreme Court has made when dealing in the realm and the issue of public education and prayer, or the religious tests. There are at least three different but interrelated tests used to analyze alleged violations of the establishment clause—in other words, the establishment of a religion. It is a three-pronged test, first articulated in the case of Lemon v. Kurtzman, called the Lemon test, and that is to determine whether that public activity had a primarily secular purpose. Here, the Pledge of Allegiance is primarily a patriotic event and purpose.

The second test is called the endorsement test. Here, there is no endorsement of any denomination of any religion. So that test is passed.

The third test is called the coercion test, and there is no coercion here for students.

The Supreme Court of the United States has commented that the presence of ''one nation under God'' in the Pledge of Allegiance is constitutional. The Supreme Court will have an opportunity to clearly resolve this because sometimes there are judges who have to be reversed on many occasions before they understand the plain intent of the law, of previous opinions and the history of our country.

I will not discuss how the Ninth Circuit erred in the applications of the facts of this case to the establishment clause, but I do commend to my colleagues the dissent of Judge O'Scannlain, which I hope will give guidance to the Justices of the U.S. Supreme Court when they do review this case.

As a resource, I direct the attention of my colleagues to some outstanding historical analysis prepared by a gentleman from Texas, David Barton, and an organization called Wall Builders.

If reciting the pledge is truly a religious act, in violation of the establishment clause, then so the recitation of our Constitution itself would be, which refers to the ''year of our Lord'' and our Declaration of Independence, which

contains multiple references to God. Our Founders claimed the right to dissolve the political bands based on the laws of nature and of nature's God.

The most famous passage, of course, is the ''all men are created equal'' and they are ''endowed by their Creator with certain unalienable rights.'' Subsequently, the signatories ''appeal to the Supreme Judge of the world to rectify their intentions''; our national motto, which is ''in God we trust''; and the singing of the national anthem, a verse which says: ''And this motto: In God we trust.''

Furthermore, the Supreme Court, even the Ninth Circuit Court of Appeals, opens sessions with a call that says, ''God save the United States and this honorable court.''

There is an undeniable and historical relationship between God and our Founders and the Government leaders throughout our history. In fact, it was Congress in 1837, acting on the will of the people, that authorized the motto ''In God We Trust'' to be printed on our currency. We can cite the actions of the entire body of Founding Fathers. For example, in 1800 when Washington, DC, became the Nation's Capital and the President moved to the White House and Congress into the Capitol, Congress approved the use of the Capitol Building as a church building for Christian worship services. In fact, Christian worship services on Sunday were started at the Treasury Building and at the War Office.

A scant review of the legislative history in States and the Federal Government and the intent of our Founders, from George Washington to Thomas Jefferson, lays out the utter absurdity—no; actually, the arrogance—of this Ninth Circuit Court of Appeals and this decision.

Each of us who has the high privilege to sit in this Chamber is very well aware of the circumstances by which the phrase ''one nation under God'' became a part of the pledge in 1954. It was the will of the Congress, the will of the people, that put it there, and today it is a will, unfortunately, of a few unelected judges who seek to remove it.

The State of California is not unique in encouraging students to engage in appropriate patriotic exercise. My Commonwealth of Virginia has a statute requiring the daily recitation of the Pledge of Allegiance in every classroom. It is thoughtfully crafted. The Virginia statute provides that:

> No student shall be compelled to recite the Pledge if he, his parent or legal guardian, objects on religious, philosophical or other grounds to his participating in this exercise. Students who are thus exempt from reciting the Pledge shall remain quietly standing or sitting at their desk while others recite the Pledge. . . .

As Governor of the Commonwealth of Virginia, I was proud to have been able to sign into law a commonsense provision to develop guidelines for reciting the Pledge of Allegiance in public schools in 1996.

While we can go on about this, the point is that the pledge is a patriotic exercise. Thomas Jefferson, who authored the Statute of Religious Freedom, had no intention of allowing the Government to limit, restrict, regulate, or interfere with public religious practices. He believed, along with the other Founders, that the first amendment had been enacted only to prevent the Federal establishment of a national denomination. This patriotic pledge establishes no religious denomination.

These Ninth Circuit Court judges discredit, in my view, the judiciary. This is an example of government overreach in a very different and harmful way. It is judicial activism at its very worst. It is activism by unelected judges who, through this decision, and decisions such as this, usurp the policymaking role given to this body and to the people of the States, the rights that are guaranteed to all of us and the people in the States by the U.S. Constitution.

Let me take a moment to put this decision into context. The Ninth Circuit Court of Appeals has a long recent record of issuing decisions that are clearly out of step with most Americans—I daresay, reality—and out of the bounds of American jurisprudence.

The court has become famous—maybe I should say infamous—for several decisions. The Ninth Circuit Court is the most overturned appeals court in the country. The decisions issued by this court have been reversed by the U.S. Supreme Court more frequently and by a larger margin than any other court of appeals in the Nation. In recent years, the reversal rate has hovered around 80 percent.

In one recent session of the Supreme Court alone, an astonishing 28 out of 29 appeal decisions of the Ninth Circuit Court of Appeals were overturned—97 percent were overturned.

What is the next decision out of this Ninth Circuit Court of Appeals? Will they ban the singing of ''God Bless America'' in our schools? Will they redact our founding documents, some of which are the greatest documents in all the history of mankind and civilization? Will the Congress, the Supreme Court, and State legislatures across the land be prohibited from opening their sessions by saying the pledge because that somehow might offend the sensibilities of someone watching a legislative body open with the Pledge of Allegiance?

The fact is, this is not an argument of God or no God. It is not an argument about separation of church and state. It is not an argument of the establishment of a religious denomination. Saying the pledge is no more a religious act than is purchasing a candy bar with a coin that says ''In God We Trust.''

Let us understand the fact is this, and I think most Americans agree: The Pledge of Allegiance should remain in our schools and other public functions. As it is today, it should be a voluntary matter of personal conscience. On this issue and so many others, the Ninth Circuit Court of Appeals is out of touch and flatout wrong. This errant decision clearly points out the need to put commonsense, reasonable, well-grounded judges on the Federal bench, rather than dangerous activists who ignore the will of the people of the States, who ignore common sense, and apparently disagree with or are pitifully ignorant of the foundational principles of these United States.

This is a wake-up call, a wake-up call for those on the other side of the aisle who are holding up the confirmation of people like Miguel Estrada, while at the same time maybe signing on to Senator MURKOWSKI's resolution or maybe at the same time coming down to the floor to rail against activist decisions such as the one that came out of the Ninth Circuit last week.

I have come to this floor many times, as I know the Presiding Officer has, to advocate for Mr. Estrada. The fact is, he is qualified. He has earned the unanimous highest rating from the American Bar Association, the rating that my friends on the other side of the aisle have previously, on other nominees, described as a gold standard for judicial nominees.

Mr. Estrada embodies the modern-day American dream that we so fondly talk about. He, like many others who came to this country in recent decades, came from a Latin American country. He, like those who came to Jamestown, VA, in 1607, or in a later year, Cajuns, Irish, Scottish, German, Scandinavian, Italian, Polish, Korean, Vietnamese, Pakistani, Indian, Lebanese, Persians, or even my own mother, all came to this country to seek out a better life. He has overcome tremendous obstacles. He has worked hard. He has embraced the opportunity that became available to better himself and found a fulfilling life in this land of opportunity.

Now Miguel Estrada stands at the precipice of service on an important DC Court of Appeals. He is ready, qualified, and more than able to take the next step, and for no other reason than scoring political points his nomination is being obstructed, delayed, and denied.

Let me say very clearly, those who deny Mr. Estrada a vote by this body are doing more harm than they realize. For Miguel Estrada and every other person who believes the American dream can happen, that shining city on the hill is dimmed today because of the partisan games taking place in this body. I respectfully encourage those on the other side of the aisle to take a lesson today. Do the right thing. Work your will and constitutional responsibilities. Have the gumption to take a stand and cast your vote.

I have no problem in taking a stand in explaining why I support Miguel Estrada. For those who are opposed, have the gumption to vote no and then explain your vote rather than perpetrating this irresponsible, duplicitous filibuster, which is thwarting the will of the majority of the Senators.

Concerning both the Pledge of Allegiance and the confirmation of Miguel Estrada, the power of the dream and the promise of America is rooted in one idea: that the direction of our Nation is and will always be determined by the consent and will of the people. The consent and will of the people is not being effectuated by the irresponsibility of a few, whether they be judges on the Ninth Circuit Court of Appeals or the Senate. Senators need to exercise their responsibilities to advise and consent on nominees.

I hope and pray the U.S. Supreme Court will reverse this egregious decision to ban the Pledge of Allegiance in the Western States of our country. I also hope and pray that Senators will exercise their duty, take a stand, vote yes or no, explain it to their constituents, and the will and the consent of the majority of the people of this country will be effectuated.

I close by saying, God bless America. I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the procedure in the Senate, one of long standing, is that we as Senators have the right to keep what we believe is our ability to have our voices heard. In this instance we have said now for some time, if the majority wants to go forward on Miguel Estrada, we should have him come back before the Judiciary Committee, answer questions, and with him bring the memos from the Solicitor's office. They have been supplied on other occasions. It has been mentioned in the RECORD specifically how it was done.

I am not here, though, to debate the qualifications of Miguel Estrada. I am here to talk about my becoming a vocal critic of the American Bar Association rating process for judicial nominees. I have to say, frankly, I have never been a big fan of the American Bar Association. I know they do some good things. I have lost significant respect for the operation of rating judges. I do this not in any way to denigrate Miguel Estrada. My statement I make today is in no way to denigrate Miguel Estrada.

I have said before, Miguel Estrada graduated from Harvard. He could have graduated at the bottom of his class at Harvard and he still would be one of the more credible, more qualified people to go to law school. It is hard to get into Harvard. But he did not graduate at the bottom. He was one of 71 editors they had at the Law Review, and he was one of their better students. This is in no way to denigrate the academic qualifications of Miguel Estrada. It is to talk about and to criticize the American Bar Association.

What the Estrada case has done is lifted the veil on how the ratings of the American Bar Association are made, revealing partisanship that has no place in a process that should be as impartial as the judges it helps to select. My criticism goes beyond the specific Estrada case. It demonstrates that we cannot rely on the American Bar Association to give us impartial ratings.

This may surprise some, but I will say I support the Republicans' stand on what should be done with the American Bar Association as it relates to judges. I think we can and should take them out of the process. I don't think we need them. I am a convert to that.

Some asked why didn't I say I felt that way when Republicans did it initially. I didn't have enough knowledge to do that. I recognize I was wrong.

So we have this funnel for all Presidential nominees, and when we were a country of a few million people, that funnel was able to put everybody through very quickly. But the bigger the country becomes and the more judges we authorize, the more Cabinet officers, the more subcabinet people we authorize, this funnel becomes clogged.

The ABA is only one additional way of clogging that as it relates to judges. I feel we should get rid of them.

The Estrada case most starkly reveals that the ABA process is fatally flawed, that its gold seal is, indeed, tarnished. The gold seal of impartiality has been replaced by a stealth seal of partiality. In my view, the ABA rating should not be relied on until the process is fixed.

Unfortunately, as I will discuss in a moment, the ABA is defending this flawed process and its inherently flawed recommendation for Mr. Estrada. It defends both in the face of a case that very clearly violates its own conflict of interest rules.

As many of my colleagues know, the ABA delegates that review of potential nominees to one individual ABA member of the ABA committee for each circuit. In effect, one person is given responsibility to recommend to the committee this person's qualifications. That individual interviews colleagues who know the nominee, evaluates each nominee, and reports to the ABA with a recommended rating for the nominee.

The ABA has three ratings: Not qualified, qualified, and well qualified. Mr. Estrada received a well-qualified rating. The ABA Committee member who recommended Mr. Estrada for that rating was Mr. Fred Fielding. Given the sensitive nature of these recommendations, ABA rules specifically prohibit ABA committee members like Mr. Fielding from engaging in partisan activities while working for the ABA. The rules note that:

> [T]he integrity and credibility of its process and the perception of these processes are of vital importance.

The ABA rules go on to implement this important principle by providing:

> No member of the Committee shall participate in the work of the Committee if such participation would give rise to the appearance of impropriety or would otherwise be incompatible with the purposes served and functions performed by the Committee.

The rules then get even more specific:

> As a condition of appointment, each member agrees while on the Committee and for at least one year thereafter not to seek or accept [a] federal judicial appointment and agrees while on the Committee not to participate in or contribute to any federal election campaign or engage in partisan political activity. Partisan political activity means that a member, while on the Committee, agrees not to host any fund-raiser or publicly endorse a candidate for federal office. . . .

The rule concludes:

> In view of the confidence reposed in the Committee and the vital importance of the integrity and credibility of its processes, these constraints are strictly enforced.

These rules were not enforced in the case of Mr. Estrada. Mr. Fielding violated them. While on the ABA Committee, Mr. Fielding played a high-level role in President Bush's transition team. He helped the President and the White House counsel clear the President's highest level executive branch appointments in 2000 and 2001. Certainly these are far more partisan roles than hosting a fund-raiser or endorsing candidates for Federal office.

While on the ABA Committee, Mr. Fielding accepted an appointment from President Bush to an international center that settles trade dispute, a job that pays $2,000 a day plus expenses; $2,000 a day, $14,000 a week, that's a lot of money.

While on the ABA Committee, Mr. Fielding helped co-found the partisan Committee for Justice to run ads against Senators who oppose Mr. Estrada. Mr. Fielding's partisan activities, in fact, span back decades. He served as deputy counsel to President Nixon. He served on the Reagan-Bush campaign in 1980, the Thursday night group. He served on the Lawyers for Reagan advisory group, the Bush-Reagan transition in 1980–1981. He served as the conflict of interest counsel, ironically enough.

He served in the Office of Counsel to the President, as deputy counsel to President Reagan. He served on the Bush-Quayle campaign in 1988; as campaign counsel to Senator Quayle; as Republican National Conventional legal advisor; as campaign counsel to Senator Quayle; and as deputy director of the Bush-Quayle transition team. He served on the Bush-Quayle campaign in 1992; as senior legal advisor and conflict of interest counsel to the Republican National Committee. He served as the legal advisor to the Dole-Kemp campaign in 1996. Just from these statements it would appear he should understand something about conflict of interest.

The ABA couldn't have picked a Republican with better partisan credentials than Mr. Fielding. And Mr. Fielding didn't just give Mr. Estrada a well-qualified rating, every rating Mr. Fielding has handled for President Bush to the D.C. Circuit has resulted in a ''well-qualified.'' All of those ratings, in my view, should be held suspect.

By contrast, Mr. Fielding did not give any of President Clinton's nominees to the D.C. Circuit—nominees who had similar qualifications as Mr. Estrada—a well-qualified rating.

What has the ABA had to say about all of this? On Thursday, February 26, 2003, the head of the ABA, Alfred P. Carlton, Jr. sent a letter to Senators FRIST and DASCHLE. I was deeply disappointed by its content.

In that letter, the ABA declares that our criticism of Mr. Estrada's case is ''unfair'' The ABA goes on to say that we seek to:

Impugn the integrity of members of the Committee and of its process during the current Senate debate. . . .

I was also a little disappointed that Mr. Carlton failed to tell me about this letter when he met privately with me a day after the letter had been sent. I didn't ask for that meeting. He asked for it.

In that meeting, I strongly encouraged the ABA to strengthen its rules and disavow the process that led to Mr. Estrada's recommendation and possibly scores more of tainted recommendations. Mr. Carlton told me he would consider such a step.

I also encouraged Mr. Carlton to write to Senators FRIST and DASCHLE and tell them that the ABA would clean up its act. Mr. Carlton also told me he would consider sending such a letter.

He not only failed to mention that just the day before he had sent the leaders a letter, but also that the letter was a strongly worded defense of an indefensible process.

If the head of the ABA cannot be straight with me, what hope do we have for this process? The letter he sent the leaders reveals that we shouldn't have much hope.

The ABA says in the letter that we have been critical of Mr. Fielding's role based solely on the fact that he cofounded the Committee for Justice. The ABA letter implies that this fact is not problematic because the Committee for Justice was formed after Mr. Fielding made his glowing recommendation of Mr. Estrada. The letter fails to mention several things: First, that even this post-Estrada activity violates ABA's clear rules. Second, that Mr. Fielding was engaged in the Bush transition partisan activities at the time he was making his Estrada recommendation. The letter concludes that our attacks on this process are ''baseless'' . . .

If this is so, then the ABA's own rules are baseless. The ABA cannot claim that our criticism of the way Mr. Estrada's recommendations was handled is baseless when that recommendation violates the ABA's own rules. Is the ABA disavowing its own rules? Does it find them baseless?

Conflict of interest rules such as the ones that ABA has adopted are not just designed to prevent the actual exercise of a bias in a way that influences an outcome. These rules are also adopted to prevent the appearance of a conflict. Preventing the appearance of impropriety is important to assure the Senate and the American people that the process of evaluating our judges is as impartial as people expect judges to be.

Before we rely upon the judgment of the ABA in evaluating nominees for lifetime judicial appointments, the ABA should not just pledge to enforce existing rules but should strengthen those rules. They should revise them to provide that individuals so heavily steeped in partisan activities not be permitted to serve in these crucial roles at all. That is, the rules should be expanded to prevent partisans from passing judgment on judicial nominees. This shouldn't be limited merely to the time period during which the individual is serving on the ABA Committee.

It strains credulity to believe that someone who occupied partisan roles in the last several Republican administrations could be viewed as impartial in this case. If Mr. Fielding had started the committee for Justice after he left the committee would the specter of bias really be any less? Mr. Fielding moved seamlessly from passing judgment on Mr. Estrada to becoming a leading advocate for his nomination.

The fact that the advocacy followed the judgment doesn't render the judgment any less suspect. Much has also been made of the fact that the full ABA Committee endorsed Mr. Fielding's view of Mr. Estrada's qualifications. This doesn't cleanse the Fielding recommendation of its taint. Mr. Fielding is an important person, a powerful man.

Mr. President, the hour of 12:30 is nearly here. I guess he left—I saw my friend from Kansas here. I just have a couple of more minutes and it will run past 12:30. I ask unanimous consent I be allowed to finish my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. It is impossible for us to know one way or another whether members of the committee felt pressure to endorse Mr. Fielding's view. It is certainly possible. And that possiblity—like Mr. Fielding's clear conflict of interest—is the problem in this case.

There are thousands of lawyers in the United States, thousands who are not steeped in partisan politics—Democrat of Republican. That is every obvious because the poorest contributors to campaigns of any group in America are lawyers. So most of them are not involved at all in politics.

We rightly cast a skeptical eye on judicial nominees who are heavily involved in partisan activities. We do that because we want those who would define the breadth and depth of our constitutional protections to be impartial and without bias.

Regardless of what side of the aisle you are on—Democrats or Republican—we should be able to agree that those who occupy the most partisan roles of either party should not be part of the ABA process.

This does not, in the words of the ABA, impugn those partisans. It is to say that the fact of those partisan activities creates a clear appearance of improperity. It is that appearance that is impossible to avoid. It is that appearance—and the doubt that it creates in the underlying process—that is the heart of all conflict of interest rules.

This issue goes well beyond the nomination of Miguel Estrada. His nomination has simply brought to light a fatally flawed process that should not be relied upon in the case of any of our nominees.

As I have said before, I now agree with the majority that the ABA should be out of the process. I hope that the ABA will rethink the staunch defense it made of its flawed process and flawed recommendations. I hope that the head of the ABA will not continue to be disingenuous when he meets with Members privately. Perhaps then the ABA would merit the trusted role that it has long held by that, in my view, it no longer deserves.

RECESS

The PRESIDING OFFICER. The hour of 12:30 p.m. having arrived, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA—Continued

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I rise to speak on a few matters of importance to us related to the nomination of Miguel Estrada, which is what we are now focused on, as well as some of the issues we should be focused on which we are not doing because the majority leader has determined we will continue to debate Estrada.

Last week, something happened in the Judiciary Committee that more of our colleagues should know about because a lot of us find this very confounding.

First, I have tremendous respect for and, indeed, consider the senior Senator from Utah my friend. I know he cares deeply about the issues and about the Senate. What we are seeing in the Judiciary Committee is going to do some significant harm—I hope not irreparable harm—not only to the Judiciary Committee but to the whole body. Up until last week, when we were moving closer and closer and closer to the edge of violating the rules the Judiciary Committee has worked upon, there were a lot of traditions on our committee. It is an important committee, a committee steeped in great legal tradition. If you look at the pictures on the wall of the various chairs of the committee, it goes long and deep.

But we have seen changes, first, in my judgment, when three court of appeals nominees were brought to a hearing at the same time. A court of appeals is an extremely important court. Every judge appointed to that court has a lifetime appointment. So the last chance there is to vet who they are, what their views are, how they think, comes in the advise and consent process on the floor of the Senate and, in the first instance, in the Judiciary Committee.

Many of us protested to the chairman of the committee that to have three courts of appeals witnesses, none of whom was without controversy, come before us on a single day did not make much sense. He said, well, that is how he wanted to do it. Although in fairness to Chairman HATCH, he was apologetic and said he would not do it again. But when we asked that we change it prospectively because these are important positions and important nominees, he said, no, he wanted to go forward.

We went until 9 that night. I was there. Chairman HATCH was gracious. I had a previous engagement at 7:30 that I had to go to and came back. By 9:30, with the members of the committee who had stayed that long quite exhausted, we had only really finished asking questions of one nominee, Jeffrey Sutton, to the Sixth Circuit.

I asked Senator HATCH if we could bring the two other witnesses back. He said he didn't want to inconvenience them. With all due respect, I expressed my disagreement. To inconvenience a nominee for the court of appeals, whether it be the Sixth Circuit or the DC Circuit, Mr. Roberts and Judge Cook, to ask them to spend an extra day here in return for what is a lifetime appointment didn't seem to me to be too much.

If normal workers, people who apply for jobs, are asked to come back by their prospective employer for a second interview or because something happened and that employer couldn't see them that day, they would hardly say it would inconvenience them, if they wanted the job.

But we seem to be running on a different schedule. So two of the nominees never got questioned. I asked them some written questions. I much prefer to ask oral questions. Answers given before the committee in the give and take are much better.

For instance, some people asked why didn't I ask written questions of Miguel Estrada, because I questioned him for 90 minutes. His answers were so obtuse and unenlightening, simply saying he will follow the law, he can't answer that because he hasn't seen the briefs, asking any written questions would have made no sense, to get those same answers back.

In any case, we did that. And then, of course, there was the hearing for Miguel Estrada, and we have rehearsed and rehearsed that over and over and over again, where questions were simply not answered. To say he was before the committee for a lengthy number of hours, and he answered some 100, or 500, or however many questions, doesn't tell the story. We all know that, because the answers he gave were to the effect: I cannot answer that; without the briefs, I cannot answer that; because it might be in a pending case before me, I cannot answer that.

Those are not real answers. With all due respect, in this Senator's judgment, I have never seen such stonewalling when a nominee was faced with so many different questions. And we continue to debate the Estrada nomination on the floor, not because the minority wants to debate it—we are happy to move on—but because the majority has chosen to debate it by filibuster, which is not ours but, rather, theirs. I hear we are going to move to the Moscow Treaty this week—that being the choice of Majority Leader FRIST—which is proof that we don't have to stay and debate the issue of Miguel Estrada. The schedule is in the hands of Senator FRIST.

What happened in the Judiciary Committee last Thursday was even more disappointing. We have had a rule that has existed in the Judiciary Committee for quite a long period of time. I am not sure of the number of years, but it is certainly over a decade. That rule is not something that is whimsy or simply tradition, such as the issue that we should never have three judges before us—I have just been informed that rule has been on the books since 1979. That is a written rule of the Judiciary Committee. It has been abided by by chairpeople, Democrats and Republicans, repeatedly throughout that period of time. I will repeat that this is not a tradition, it is not something that is sort of fuzzy. This is not even like blue slips. That is another place where the committee just changed. I didn't mention that, but I will take a minute to mention that.

We have always had a tradition of blue slips where, if a Senator from a home State objected certainly to a district court judge, that judge would not go forward. Many colleagues on the other side of the aisle have used the blue slip with success, from their point of view, repeatedly in the nineties, particularly when President Clinton was President, and when they controlled the Senate, or when they didn't control it. That is a tradition simply cast aside by the majority.

So we have the way we conduct hearings, blue slips, and everything dealing with judicial nominees.

As I said, we were getting closer and closer to the edge of no longer having comity on the committee, abiding by traditions. It almost seems as if it is, like ''Alice in Wonderland,'' first the verdict, then the trial; the majority determined the result they wanted and changed the rules to fit the result: We want a lot of nominees put on the bench quickly. OK, we will stack them up in hearings and not give every Senator a chance to ask all the questions he or she wants. We have a nominee whose views, in all likelihood, were questioned and gone over thoroughly at the White House, but we don't want the public or the Senate to know, so we will instruct him not to answer questions in any dispositive or enlightening way. We have nominees we could never get through, in terms of comity—bipartisan comity—so we will get rid of the blue slip rule, or weaken it significantly.

As I said, all of those were traditions of the committee. I have been told over and over again that this body is very mindful of traditions, but they seem to be falling one by one—we have had more traditions falling in this month and a half that we have been under new leadership than in all the time I can remember being here. That is only 4 years.

But last Thursday, we had an unprecedented action. That action was that a rule of the committee—not a tradition, not something subject to anybody's interpretation—was just steamrolled over—ignored, forgotten, et cetera. That is one of the reasons we may need courts. That rule, which was written and ratified by the members of the Judiciary Committee when we organized this year, is a simple one. Rule 4 says:

> The chairman shall entertain a nondebatable motion to bring a matter before the committee to a vote.

The rule goes on to say:

> If there is objection to bring the matter to a vote without further debate, a rollcall of the committee shall be taken, and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with 10 votes in the affirmative, one of which must be cast by the minority.

I will repeat that:

> . . . debate shall be terminated if the motion to bring the matter to a vote without further debate passes with 10 votes in the affirmative, one of which must be cast by the minority.

That is crystal clear. What it says is that if you want to cut off debate in the Judiciary Committee, you need one member of the minority party to vote to cut off that debate. It is obvious why it was put in the rules: so there would be some form of comity, so that the majority party—even if they had 15 members of the Judiciary Committee and the minority party only had 5—could not shut off debate. It doesn't relate to the actual vote itself. It relates to how long one is entitled to debate.

Well, last Thursday, when the committee was expected to vote on the three nominees I mentioned earlier, two of whom were not questioned because they were all stacked up to be debated at one point—I believe it was Senator LEAHY and Senator KENNEDY who were there; I was not because I was in the Banking Committee hearing Chairman Greenspan. But Senator LEAHY and Senator KENNEDY invoked rule 4 and said, ''We want to continue debate.'' At that point in time, Chairman HATCH called for a vote.

Mr. DURBIN. Will the Senator yield for a question?

Mr. SCHUMER. I am happy to yield.

Mr. DURBIN. I ask the Senator this basic question because there are some trying to follow this debate. Being lawyers and having been on Capitol Hill for a while working in this environment, we have a tendency to speak in terms that perhaps the average person may not understand. I want the Senator from New York to help me come to the basic question about why any average person following debate on the floor of the Senate in America should even care about the compliance with rules because I think the Senator has made this point.

The Senator said that now, with the new Republican majority in the Senate, with the Miguel Estrada nomination, they are violating the traditions of the Senate in terms of questions to be asked for those seeking lifetime appointments to the Federal judiciary. The chairman, ORRIN HATCH of Utah, of the Judiciary Committee has now said he is going to change the way Senators from a given State can approve of the nominees before they come up for consideration before the committee.

Senator HATCH, in one of his first acts as chairman, scheduled three controversial nominees for one day, in an unprecedented scheduling, which, frankly, called into question whether there would be enough time to ask important questions. And now, as late as last week, Senator HATCH has said he is going to virtually ignore the established rules of the Senate Judiciary Committee that have been in place through Democrats and Republicans, to cut off debate in the committee.

My basic question to the Senator is: Why is this important to the average citizen following this debate? Why should they care if Members of the Senate are twisted in knots over procedure and tradition? What is the bottom line here? Why is this significant? Is this the clash of titanic Senate egos, or is there something more at stake in this issue?

Mr. SCHUMER. I thank my colleague for asking the question which, as usual, from his lawyer-like mind, is able to pierce through the legalisms and reach the core of the debate that people can understand; it is an excellent question.

This is not simply a clash of egos, or even two lawyers arguing a point for the sake of it. The bottom line here is that this is what our country is all about in terms of protecting the rights of average people. The bottom line is that the Founding Fathers, and then Congresses from the very beginning—from 1789—understood the power a Federal judge has over an individual. The power of the judge is much closer to the power of a king—who also has a lifetime appointment—by definition, than is the power of a President or a Senator or a Congressman, because that judge is appointed for life and can just make up his or her mind and decide that should be done.

What we have had through the years of tradition is a very careful vetting of who should become a judge. The rules are simply a device to determine who those people are in terms of back-and-forth questioning, of hearings, of votes, et cetera.

The Founding Fathers certainly shied away from the idea of the President simply appointing judges. They knew the awesome power judges had, and they wanted to make sure there would be a thorough airing of who this person was before that person ascended to this lifetime appointment to a powerful position.

Every one of the rules the Senator mentioned goes to whether a person can organize in a union; whether a person can be discriminated against because of the color of his or her skin or their religion or their sex; whether a corporation can violate the Clean Water and Clean Air Acts and affect our lungs and affect our children's health; whether, for instance, an issue I know my friend from Illinois has been very much involved in, whether a meat packing company can decide how clean their plant ought to be, given there are Federal laws that govern them. The judges have all this kind of power.

The very reason we debate these issues and have these rules is we want to make sure the people who become judges will, indeed, follow the law and not simply get up there and say: I promise you I will follow the law. We have been there.

Mr. DURBIN. Will the Senator yield for another question?

Mr. SCHUMER. I will be happy to yield.

Mr. DURBIN. If this is not an ego trip between titanic Senate egos as to who is going to prevail, I ask the Senator from New York, what is the agenda here? Why would the Republicans in the new majority of the Senate Judiciary Committee change the rules, change the traditions, change the approach, take away power of individual Members of the Senate to ask questions of nominees, to have the time to try to come to understand the values they are going to bring to the judiciary, to have time to at least debate the nominations? What is the larger question here? What is it that is driving this kind of radical transformation of the Senate Judiciary Committee?

At this moment in our history, having just come off the last Presidential election so closely decided, followed by a congressional biennial election which, again, was closely decided, what is it that is driving this effort, does the Senator believe, on the Senate Judiciary Committee to make such radical changes in the way we choose Federal judges?

Mr. SCHUMER. I thank my colleague for the question. It is a very good question. Of course, it would involve us going into the heads of our colleagues, both on the other side of the aisle and the White House, in figuring this out. But I will tell my colleague what I think.

For some reason, the other side fears an open debate. For some reason, the White House and the other side do not want their nominees fully questioned. They have gone through every device and, as of last Thursday, even breaking the Senate rules. If the average citizen broke the rules, whether it be the driving rules, the parking rules, the rules of how you have to maintain your house or your sidewalk, there would be some recourse. I do not know what the recourse is here, but to abjectly break the rules and just say, I am breaking it, tough rocks, Jack, is so against the traditions we have had. For some reason, they do not want these nominees to be questioned. Why is that? We can only speculate, but I will tell my colleague what I think. I think some of these nominees' views are probably, and in some cases certainly, so far out of the mainstream that they do not want those views to become public because then it would either be, at minimum, an embarrassment for them, because this is not how President Bush was elected or most of the Senators were elected. We have mainstream conservatives and mainstream liberals, but very few Americans say: Have such a change in the way the courts and the Government functions that we should go back to the days of the 1930s or the 1890s.

There is a movement called the Federalist movement which basically has been devoted to cutting back dramatically on Federal power, giving that power to the States, giving that power to corporations, giving that power to others. I did not hear any mandate in the elections of 2000 or 2002 to go back to the 1930s, to go back to the 1890s, the way, say, I believe Justice Scalia, who has gone through the process, thinks. In fact, not only was there no mandate, there was no discussion. So when one asks oneself the very good question my friend from Illinois has asked me, which is, Why are they so afraid of questions of nominees, of debate, it is not certainly because they are afraid we are going to slow it down. We asked for 1 extra day of debate for Judge Cook and for Mr. ROBERTS. We did not get it. All we want from Miguel Estrada is some answers to questions and some papers, which they could have sent months ago. So this is, clearly, not just an issue of delay. If it were simply an issue of delay, we could work out an agreement, put in a time limit, and vote.

In my judgment, it is clear they do not want these questions answered. They do not even want them asked. That is why we are cutting off debate. Why? My guess—and it can only be a guess—is because the nominees to the judiciary, at least some of them, are so far over that if their real views were ascertained, the American people would be aghast.

Mr. DURBIN. If the Senator will yield for another question, yesterday in Chicago a reporter came up to me on the Miguel Estrada nomination. He

said: Senator, isn't it a fact the reason you are blocking the Miguel Estrada nomination is because he is pro-life and you are pro-choice? You disagree on the abortion issue.

I ask the Senator from New York who sat through the Judiciary Committee with me over the last few years, is it not a fact that with over 100 nominees from the White House that President Bush has successfully guided through this Senate, is it not a fact the overwhelming majority of those disagree with our position on choice, on abortion, and yet they have gone through this committee, almost all of them, without controversy, many of them with routine rollcall votes? I ask the Senator from New York, does this difference of opinion come down to whether or not we are going to receive conservative nominees from the Bush White House and now we have the Democrats in the Senate Judiciary Committees stopping conservative nominees; is that what is at issue here?

Mr. SCHUMER. I do not believe so at all. I do believe—and this is another excellent question—a President should be given some degree of flexibility and latitude because the Constitution says the President should nominate judges. We advise and consent.

If choice were the issue, then I probably would have voted against—I think of the 106 nominees who have come before us, more or less, I have voted for 100. My guess is of those 100, given they were nominated by President Bush who made commitments to the pro-life groups, that they would agree with them and try to get judges to ''think like Scalia and Thomas,'' that the overwhelming majority were pro-life. In fact, I know some of them were because I have read their decisions. I have read what they said in lower courts. I voted for them. I do not believe in a litmus test. I believe very few Members of this Chamber on either side of the aisle believe in a litmus test.

My guess—and I cannot speak for others—when on issue after issue a judge would have such extreme views that he would take the courts and the rulings so far out of the mainstream that Americans would be aghast, that ideological-type judges, whether on the far left or the far right, instead of doing what the Constitution says, interpret the law, rather make law because they feel so strongly that they have to pull the country in a direction way beyond, those are the few judges we—at least I—have objected to. Again, I have to use my judgment. Obviously, this is not an objective meter here, but that is what we have done.

I say to my colleague, the irony is this: Our good friend from Utah and many of the others on the other side of the aisle played the same watchdog role when President Clinton was President, and we have quote after quote from Senator HATCH, from Senator SESSIONS, from Senator Ashcroft, from the leaders of the Judiciary Committee back in the nineties, that they had to be on guard against what they called ''activist judges.''

To them, activist meant too far left. To me, activist means either too far left or too far right. An activist judge—I sort of sympathize with that comment. An activist judge means that because they feel strongly, instead of just interpreting the law and trying to figure out what Congress meant, they will impose their own views.

Mr. DURBIN. May I ask the Senator from New York—I think it is important in this debate that we take this general and theoretical analysis of judges and their impact on America and try to make it something closer to home so the average person following this debate understands what is at stake.

I can recall—and I am sure we were both Members of Congress at the time—when we passed the Americans with Disabilities Act.

Mr. SCHUMER. Right.

Mr. DURBIN. This was amazing legislation because it was so strongly bipartisan. TOM HARKIN, Democrat of Iowa, then Senator Bob Dole of Kansas, they came through and said, on a bipartisan basis, let us extend freedoms and opportunities to people in America who have been denied those opportunities; let us pass a Federal law—Congress passes it, and the President signs it—and establish opportunities for disabled Americans.

I think this is a good illustration of what happens with the Court when it goes too far in one direction. I ask the Senator from New York if he could give us an illustration of what happened with the Americans with Disabilities Act when it came to the highest court in the land when they had a chance to take a look at it and say whether we will protect disabled Americans and whether Congress had gone too far or not far enough, so that people can put in context what we are debating. Can the Senator give us an illustration of what happened with this law?

Mr. SCHUMER. Yes. The bottom line is the Court, despite the fact that Congress, on a bipartisan basis—by the way, supported by George H.W. Bush, the 41st President of the United States, who signed it into law—somehow comes up with an interpretation that parts of the law are beyond the Constitution and millions of disabled people are deprived of rights. That did not just happen for disabled people. In that case, which was the Garrett case, I believe my colleague is referring to, they said the States did not have to abide by this. Even though it was clear that the intent of Congress was that everyone had to abide by it, they said the States could discriminate against disabled people.

I know my colleague from Illinois was involved in a law that says someone cannot bring a gun into school. Again, somehow the Supreme Court comes to the determination that a person can, or that the law that we passed, which seemed to be a general mainstream consensus law—because some of these folks tend to be ideologues, they came up with some God-forsaken reason that that could not happen.

Another one on which I worked long and hard, along with our colleague from Delaware, Senator BIDEN, and our colleague from California, Senator BOXER—I know the Senator from Illinois was very supportive—was something called the Violence Against Women Act, which for the first time said that the Federal Government could be involved in helping women who were abused by their spouses. Before that, it was a sort of dirty little secret hidden under the rug. The law had amazing effect.

I know this one better than I know the Garrett case, but it is the same type of thing. It affects average people. For the first time, women were able to get hotlines, find out whom they could call when they were abused. Shelters sprung up. When a woman was beaten in the past, all too often there would be nowhere to go and she would have to go home to the same husband who beat her before.

On issue after issue, we helped women who were abused come out of hiding and seek help and become productive citizens again, having a huge effect not only on them but on their children. Studies show that if a child is abused, which this act would have affected, or the child's mom was abused by the husband, they are much more likely to be criminals. So it affected all of us. All of a sudden, the Supreme Court says that Congress's finding that this law affected commerce in the United States was undone and throws out part of the Violence Against Women Act.

So this is not an abstract argument, this is not a bunch of lawyers just arguing how many angels can fit on the head of a pin, this is not partisanship—to me, at least. I have devoted my life to government. I was elected when I was 23. I want to make the Government help people. I want people to believe Government is on their side. When nonelected judges come in and take years of work that Congress does—whether it affects disabled people, kids in school, the cleanliness of the water we drink, how a meatpacker has to obey certain laws, or the Violence Against Women Act—and throws it out on reasoning that 10 years before would have been regarded as crazy, the very least we owe our constituents, in my judgment, is the obligation—it is not simply a right, it is an obligation—to question nominees for the bench.

Mr. DURBIN. If I may ask the Senator another question?

Mr. SCHUMER. Please.

Mr. DURBIN. I will yield the floor to him after this. At the same hearing, Chairman HATCH basically rejected a rule that I think has been in place almost 20 years in the Senate Judiciary Committee——

Mr. SCHUMER. If I might interrupt the Senator. Since 1979.

Mr. DURBIN. So for 14 years this had been the rule under Democrats and Republicans.

Mr. SCHUMER. Twenty-four.

Mr. DURBIN. Twenty-four—I am sorry. This has been the rule.

Mr. SCHUMER. He is not on the math committee. He is on the Judiciary Committee.

Mr. DURBIN. Right. Math was a minor. Law was a major.

But in this situation, where a decision was made that we can no longer debate these nominees, we also had before us a nominee from Ohio, a justice on the Ohio Supreme Court, Deborah Cook, whom I had a chance to ask a few questions of in that marathon hearing where three controversial nominees were scheduled for the same day. I do not know if the Senator from New York was present. But I sent a written question to this justice and asked her point blank: Tell me a little about your thinking, about your judicial philosophy, particularly the concept of strict construction of the Constitution—that is a cliche almost, but it is a catch phrase that is used to try to judge whether someone is far to the right, far to the left, or whatever it happens to be.

Justice Cook, in her reply to me, said that she did not characterize herself as a strict constructionist, but she went on to say that those who were strict constructionists—and I wish I had the direct quote in front of me—were less likely to decide in favor of such things as Brown v. The Board of Education, Miranda v. Arizona, and Roe v. Wade.

My staff has been kind enough to give me this question.

I asked her the following:

Do you think the Supreme Court's most important decisions—Brown, Miranda and Roe—are consistent with strict constructionism?

This is her answer, a judicial nominee:

If strict constructionism means that rights do not exist unless explicitly mentioned in the Constitution, then the cases you mention likely would not be consistent with that label.

I said in the committee and I say here, that is a painful answer for me to hear, to think that those who believe that a strict construction of the Constitution would not lead them to integrate America's schools, to protect a woman's privacy, or to give to criminal defendants the most basic rights, knowledge of their constitutional rights—painful for me to read this, but painfully honest.

The point I make to the Senator from New York, and then I will let him finish: Is that not what we are looking for? Are we not looking for candor and honesty from the nominees to reach a conclusion on an up-or-down vote?

In a situation where candidates, nominees, such as Miguel Estrada, refuse to answer the traditional questions asked by Republicans of Democratic nominees, where Senators from a home State do not have a voice in whether a judicial nominee comes before the committee, when three controversial nominees are put in a hearing in one day on the Judiciary Committee, where the chairman of the Judiciary Committee eliminates the protection of the right to debate nominees, do we not have a closing down of this kind of candor, openness, and honesty that we are seeking, moving instead towards secrecy and stealth? Does this not get to the heart of the issue as to whether or not the judges we select for lifetime appointments to the highest courts of the land are people whom we know, who answer questions honestly before they are given that terrific opportunity to serve our Nation?

Mr. SCHUMER. If I might answer, I think my colleague has hit the nail on the head. This is so important. What we have come to is the fact that nominees are often told not to answer questions.

There is an article in the Legal Times where one of the leading conservative judges of the court of appeals instructed nominees not to answer questions. Why would someone say, do not answer questions; fudge on the questions? I think I know why, as we talked about before. Because if they gave their honest answers, they would become so controversial that many of them would not pass. But imagine the alternative: Not asking the question, or not getting the question answered, and then this nominee who has views way beyond the mainstream gets on the court and starts doing things. Do you know what would happen? Our constituents would come to us and say: Do something.

We would try, but it would be very difficult. We would probably have people on the other side saying: Well, I didn't know he thought like that. Yet when we have the opportunity to ask that nominee questions, to try and get some idea of how he thinks, we are denied the answers—either because we did not have time, as in the case of the three nominees, or in the case of not allowing discussion to go on in the Judiciary Committee, or because we had the time—with Miguel Estrada we had plenty of time, but the nominee refused to answer the questions, simply saying: I will follow the law.

We have been through that. It is legendary that when Clarence Thomas was up for the Supreme Court, people wanted to know his view on Roe v. Wade. For me, it is an important issue, but it is not a litmus test. Of the 100 people I voted for judge, most are against Roe v. Wade, but I don't have a litmus case.

But for a nominee to the Supreme Court to say he had never discussed it before while in law school—lawyers always discuss these cases—struck many as disingenuous. I was not in the Senate then, but people vowed they were not going to let that happen again; that was a mockery of the process. This is too solemn a process.

Before I yield to my friend from Utah, and I appreciate him yielding to me and yielding to all Members, and I will yield to him, speaking for myself, this transcends any one nominee. We are beginning to see a complete vitiation of the process whereby nominees will be nominated by the White House and rubberstamped by the Senate. In my judgment, nothing that we do here could do more damage to the fundamental underpinnings of our Republic than that.

I remind my colleagues, that is not what the Founding Fathers intended. The very first nomination to the Supreme Court was, I believe, Rutledge—I always forget if it was Randolph or Rutledge; my daughter was in the play ''1776'' and she played Rutledge, and I was constantly calling her Randolph, much to her chagrin. But in any case, Rutledge was defeated because the Senate had the temerity, I guess, in the opinion of my good friend from Utah, to ask Rutledge's judgment on something very controversial at the time, the Jay Treaty. The Jay Treaty was not what judges rule on, but the Founding Fathers—by the way, we just heard at our lunch that a large percentage of the first Senators were members of the Constitutional Conference, so they certainly knew what they wanted to do.

If they were questioning Rutledge on the Jay Treaty, then certainly asking Miguel Estrada how he feels about the commerce clause and the right to privacy and the 11th amendment and the first amendment and all of these things could hardly be out of bounds.

In fact, I would argue if the Founding Fathers were watching this debate, they would say: Yes, that is what we intended.

With that, I yield to my friend from Utah for a question only.

Mr. HATCH. I ask the Senator, is it possible the Senator could put together the questions he believes Miguel Estrada has not answered appropriately, and I will do my best to get him to answer them? If not appropriately, as defined by the Senator, but at least in more detail than the Senator seems to be indicating here.

I know he answered a lot of questions appropriately, and I believe all of them appropriately, but I would be glad to assist the Senator if he will give me a list of questions the Senator would like to have Miguel Estrada answer. I will do my best to see he answers them for the Senator, and hopefully that will have the Senator feel a little bit better and cause him to vote for him.

Mr. SCHUMER. I thank the Senator for his question, and I think it is a good-faith statement to break this deadlock which I hope we will do because we have made the arguments over and over again.

Let me make an alternative suggestion and see what the Senator thinks and then I yield to him. Why don't we bring Miguel Estrada back for a second

day of questioning? I find written questions never to bring out the same analysis, the same understanding of how a person thinks. That is why we do not conduct trials by written question. Miguel Estrada may say something, and I will want to immediately ask him, well, what about this, and to take another week and ask another question and another question and another question, I am sure within a short amount of time my colleagues on the other side of the aisle will be saying we are being dilatory.

If we could have another hearing of Miguel Estrada and if he could let us see the documents he authored as attorney general, I think it was my good friend's junior colleague from Utah who suggested we do that, and then we would set—I cannot speak for my whole caucus, but I will state what I would be for. I would be for setting a time certain when we vote for him, another day of hearings, ask Miguel Estrada to come back for a day.

It cannot be too much to ask when one is 42 years old and, may God grant him a long and healthy life.

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. And to ask him for a day of questions and to give up these documents which are very important, then we can settle this whole issue.

I yield.

Mr. HATCH. As the Senator knows——

Mr. SCHUMER. For a question only.

Mr. HATCH. As the Senator knows, he cannot give up those documents. He has no control over them. And the administration will not and neither would any other administration.

Would the Senator be willing to get the Democrats to agree to an up-and-down vote if we had one more day of hearings where the Senators could ask additional questions? I am not saying we are going to do that, I am just saying would we have an up-and-down vote.

We cannot produce those documents because they are privileged. I think the Senator knows that. But if you had one more day of hearings where you could ask the questions, could we get the Democrats to agree to an up-and-down vote if you did that? I cannot say I can do that, but I certainly would look at it.

Mr. SCHUMER. Let me try to answer my colleague.

Mr. HATCH. I know the Senator cannot speak for all the Democrats, but if all the Democrats would agree, or if you can get the majority leader to agree and the Democrats to agree to stop the filibuster, I might consider that—not because I don't think he answered the questions the first time; he did, in a very thick transcript—as a gesture.

I would have to look at this. I would have to talk to the administration, the people on our side, and Miguel Estrada himself, but if I was assured we would have an up-and-down vote where people could vote whatever way they wanted to, I would give some consideration to that, subject to my talking to our leadership on this side and talking to the White House. But there is no question they cannot give up these documents. He has no authority over those documents and the administration will not give up those documents no matter what we do. But I guess you would at least have an opportunity to ask additional questions, in spite of the fact that the distinguished Senator who conducted the hearing said it was conducted fairly, that he asked every question he wanted to ask, that he had the right to ask any other questions he wanted to, that he could have filed written questions, in addition.

But the Senator has said if he could have one more day of hearings, because written questions do not cut it as well as oral testimony, if he could have one more day of hearings, I would consider this, and I would talk to my side and I would talk to Mr. Estrada and the White House if I knew there would be an up-and-down vote, the filibuster would end, this threat to the process would end. I would certainly give every consideration to it and try to do that.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from New York.

Mr. SCHUMER. Let me try to answer my colleague. Again, I have the same caveat he does, even more so. I cannot speak for my Democrat colleagues. I am not even chairman of anything.

I would say this to my colleague and make a couple of points. The best evidence of how Miguel Estrada feels—given that he has not written articles, he has not been a judge where we can see his record—are these documents. We have debated this over and over again. There is no privilege. There is no anything else.

Senator LEAHY and Senator DASCHLE, in a letter to my colleague—and I will be delighted to yield when I have finished my answer—have laid out the conditions by which we believe we would at least get some bit of evidence to see who Miguel Estrada really is. That is not in terms of his history, which has been repeated over and over again on the floor, and a wonderful history it is, but in terms of how he thinks and how he would think and how he would rule as a judge.

So the best evidence is not hearsay evidence; it is the written evidence. But let me just say in regard to the hearing—and here is my problem with the offer and why the written evidence is so important—let us say Miguel Estrada again refuses. He sits for 10 hours and refuses to answer—or answers, let's characterize it, in the same way.

I ask him—DIANNE FEINSTEIN asks him his feelings on Roe v. Wade, and he says I can't tell you that.

And Senator DURBIN, for instance, asks him how he feels, widely or narrowly, the commerce clause should be interpreted, and he says: Because I might rule on a case about the commerce clause, I can't answer that.

By the way, I have checked with a whole bunch of legal ethicists, and the canons—you know, what the lawyers say you are allowed to do when you are nominated to be a judge—have nothing to do with broad questions like that. They deal with specific cases.

So let us say we get, as we would characterize it, or as I would, stonewalled, no answers on anything.

As my colleague well knows, when I asked Miguel Estrada about previous cases he liked or didn't like, he said: Well, I would have to read the briefs.

I have asked subsequent witnesses how they feel on cases and they have given answers to me. I had an interview with someone the President is thinking of nominating in my State. I asked her what is a case you like, what is a case you don't like? She was very forthcoming—you know, that had already been ruled on. So we would be in a complete——

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. I would be happy to yield in a minute. We would be giving away the store without accomplishing our goal if we agreed, before we heard the answers, that we would agree to a date certain on the vote.

Perhaps we should have the hearing, see how he answers those questions, and then see where we are. If he is much more forthcoming, whatever his answers are, we might be able to make some progress. But if he gives the same exact answers as he gave 3 weeks ago, I for one could not agree to just having a vote on him unless we get the best evidence, the written evidence, which the administration will not give up. You are right. It is not Miguel Estrada, but it is the administration which has nominated him. So they are not sort of players from far away; they are part of this whole process. Other administrations, Democrat and Republican, have given up the same types of documents.

I don't want to get into a debate about that now, but that is our confirmed view.

So an alternative which I cannot even—I would have to talk to my colleagues about—would be: Let us have another day of hearings and then let us see what happens there and see where we go. But I think it would not make any sense, any sense whatsoever, to say today, or tomorrow, we will have a vote as long as he comes back. Because what if he does the same exact thing he did last time, which I know you find was fulsome and reliable—not reliable, but fulsome and elucidating testimony, but I found to be completely evasive.

I am happy to yield to my colleague for the purposes of another question only.

Mr. HATCH. Sure. Let us be honest about it. If you are going to ask him how he feels about a case or how he feels about the commerce clause, I have to admit I don't think those are legitimate questions. What he feels is not important. What he is going to do as a judge is important.

I am hardly going to bring him back for another day, after we had one of the

longer hearings for a Circuit Court of Appeals nominee, after it was conducted by the distinguished Senator from New York and the Democrats, when my colleagues on the other side have said it was a fair hearing, questions were asked—I am hardly going to bring him back for another day unless we have some sort of agreement we are going to have a vote.

Mr. SCHUMER. I'm sorry, I couldn't hear the Senator.

Mr. HATCH. I say I am hardly going to bring him back just on the speculation he is going to answer questions the way you think he ought to answer them when in fact he answered questions the way all of his predecessors have answered them. Basically, they were answered this way:

With regard to Roe v. Wade, he basically said regardless of my personal feelings, I am going to uphold the law. That is the law. That is what everybody has said who appeared before my committee when I was chairman during the 6 years of the Clinton administration. They didn't come out and say yes, I am for Roe v. Wade. If they had, I would not have held that against them because I presumed they were, anyway. But the fact of the matter is virtually every one of them basically said: Regardless of my personal views, I am going to uphold the law, which is what he said.

I guess what I am asking is—if you will give me a list of your questions that you asked, that you feel there was not a forthright answer—I don't know of any where there wasn't a forthright answer; it may not have been what you wanted—I will be happy to take those back to him again and get you answers that would be more detailed, if that is what you want.

Or, as an alternative, would it be possible for us to have 1 day of hearings where we encourage him to answer questions in more detail, because that is what you appear to want—even though I thought his answers were more than adequate—and I would attempt to do that. Of course, with the approval of my side; if I can. I would work in good faith to do that.

But I would certainly want to have the filibuster ended, because this is a damaging thing to this institution, and it would be my way—if I could do it and pull it off—of saying, look, we'll try to accommodate our friends on this side, but let's be fair and let us have a vote up or down.

It may be that vote will go the way you want it to go. You may vote for him in the end. I don't know. But the point is, I would try to do that in order to get this off of this filibuster, which I find extremely dangerous, and even beyond consideration of Miguel Estrada. It is something I had to stop, as chairman during my 6 years, because we had a few on our side who felt we should filibuster people like Marsha Berzon and Judge Paez and even Margaret Morrow.

As you know, as much as I have been maligned by at least one Senator on your side, they would not have been sitting on the Ninth Circuit Court of Appeals if it hadn't been for me, and I think some of the accusations that have been made have been very unfair about the time I was chairman.

Mr. SCHUMER. Let me reclaim my time because I am running out.

Mr. HATCH. But let me make that offer. I will either get him to offer more detailed answers in writing or I will get him—I will do my very best to have him answer more detailed answers in a 1-day hearing.

Mr. SCHUMER. Reclaiming my time, Mr. President.

Mr. HATCH. But I would want to have a vote.

Mr. SCHUMER. I make a counterproposal to my colleague. Either we have him come back for 1 day, and the administration, his nominator, releases the papers as Senator DASCHLE and Senator LEAHY have asked, and we agree to a vote ahead of time; the papers and a day of hearings—again, I can only speak for myself that that would satisfy me—or, in an effort to break the deadlock, we have the day of hearings without any commitment. Because, in all candor—you know, the Senator from Utah is a very fine lawyer and probably a lot better than I am. But I am not going to give away the store for a pig in a poke.

If we were to agree to a vote right now and Miguel Estrada were to come before us and just verbatim give the exact same answers he gave before, we would not have accomplished anything.

So I say to my colleague, in an effort to break the deadlock which we all want to break, believe me, let us have Mr. Estrada come back for a day of hearings, no preconditions. There will be lots more people paying attention to those hearings now. And let the American people make a judgment as to whether he is being forthcoming or not. Maybe his answers will change and they will say he is. Then we will decide where we go from there.

Because I will say this: This is one place I disagree with what my colleague said. To say, poor Mr. Estrada, he sat through 9 hours of hearings and to ask him to do it again is not fair seems to me to be—we are lawyers. Probably right now Mr. Estrada, who is earning a great salary because he is an excellent lawyer, sits through far more than 9 hours to try to win a single case. This, appointment to the second most important court in the land, is a lot more serious than any one single case Mr. Estrada is arguing.

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. So I say to my colleague, to achieve a lifetime appointment on this very serious court, Mr. Estrada ought to be willing to sit—I am not saying we should do this—for a week or a week and a half. He is 42 years old. He is likely to be on the bench for 30 years, God willing he has good health. So that should not be the consideration.

Mr. HATCH. Will the Senator yield?

Mr. DURBIN. Will the Senator yield?

Mr. SCHUMER. I yield to my colleague from Illinois.

Mr. DURBIN. Mr. President, I want to make this as brief as I can. I commend the Senator from Utah coming to the floor. I would like to ask this question of the Senator from New York.

I think you have taken a reasonable position. Having practiced law for a number of years, as the Senator from Utah did, and I believe the Senator from New York, you know, in the discovery process, when the other side refuses to turn over a document, goes into this long fight, you begin to suspect, on your side of the case, there is something very important in that document.

These documents of Miguel Estrada have become the crux, the center point, of the debate about what this man has said and done and thought as assistant to the Solicitor General in the Department of Justice. So I think the Senator from New York is right in insisting that be part of any compromise ending this deadlock.

I also hope we will insist, on the Democratic side, that if we are going to end this deadlock, we return to the regular order of the Judiciary Committee, that we do not put three controversial nominees on the calendar in the same day, that we do not ignore the blue slips required of each Senator from the State, that we do not violate the rules of the Senate that have been in place for 24 years in relation to debate in the committee.

I think all of those would be a good-faith effort to go back to the regular order and establish some comity and understanding between us, which I hope will guarantee that we will not face this kind of situation in the future.

Mr. SCHUMER. Answering my colleague's question, he is exactly right. I am not someone who has practiced law, like my colleague from Illinois and my colleague from Utah—I was elected to the assembly right after law school—but every good lawyer knows, even every good law student knows, that hearsay evidence is not as good as written evidence.

So when we hear all these people say—I have heard my good colleague from Utah say: This one and this one and this one say he is great, and this one and this one say he will follow the law. If my colleague truly believes that, then he has nothing to hide in terms of giving up these documents because they will show that Miguel Estrada will follow the law.

The problem is, we have just as many people who worked with him in the Solicitor General's Office who said: Oh, no, this guy is so far over that he writes his own laws, and he would write his own laws.

Mr. HATCH. Name one. Name one person. Give me a name.

Mr. SCHUMER. I don't know which is true and which isn't.

His superior.

Mr. HATCH. Who? Bender?

Mr. SCHUMER. Bender, who was his immediate superior.

Mr. HATCH. That is the only name you can come up with?

Mr. SCHUMER. I am going to reclaim my time.

Mr. HATCH. Give me a break.

Mr. SCHUMER. He was his immediate superior. But the bottom line is this: My colleague from Utah immediately discounts Mr. Bender because he does not agree with his view on certain issues. OK. If, if, if, if Mr. Bender is wrong, the documents will show it. If Mr. Bender is right, the documents will show it.

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. Not yet. I will in a minute.

But the bottom line is, as my colleague from Illinois stated, when somebody will not release documents, that you know can be released, then you say to yourself, What is in there?

Again, we are not just dealing with one case. We are not dealing with just one situation. We are dealing with a lifetime appointment to the second most important court in the land.

Why won't Mr. Estrada or the administration—which is his sponsor, his mentor in this particular situation—why won't he give up these documents?

I will tell you what most people think when they hear about it. And I have talked to my constituents, the few who ask me about this. They say he is hiding something. Do I know he is hiding something? Absolutely not. I have not seen the documents. But I tell you one thing: The great lengths that the administration and my colleagues on the other side have gone to not give up these documents makes one suspect there is something there they do not want people to see.

So the documents are crucial. And I, for one, believe we cannot agree to a date certain to vote until those documents are given up or unless Mr. Estrada somehow answers the questions in a truly dispositive way.

By the way, I say to my colleague, he said everyone else answered questions the same way. Absolutely not. And we have shown, in case after case, in nominee after nominee—the very nominee after Mr. Estrada, when I asked him the same exact question, was far more forthcoming than saying, ''I can't,'' or ''I will follow the law.''

So the bottom line is, I would repeat my tentative offer—because I would have to check with my colleagues—let's have a day of hearings of Mr. Estrada and see where that leaves us, see if he gives the same answers. And let everyone see him answer the questions the way we saw him. And let's see if they think he is being forthcoming. And let's see if they think—when he is asked crucial questions that will affect people's live—he gives answers that satisfy people that he be appointed to the second most powerful court in the land. That is a way to resolve this.

Shakespeare once said: Me thinks the lady doth protest too much. There has been so much protestation about figuring out Miguel Estrada's record—not his legal qualities, not his story of being the son of an immigrant coming to America when he was 17, not speaking English. That is all great. He deserves a pat on the back for that. But that alone, in my judgment, does not entitle him to appointment to the second highest court in the land with a lifetime appointment.

I will be happy to yield to my colleague in 1 minute. But, again, it is certainly worth, with all due respect, the chairman's time, and all of our time, to hear him again. And maybe he will be somewhat more forthcoming. And then maybe we can come up with a compromise.

Several Senators addressed the Chair.

Mr. SCHUMER. I yield to my colleague from Massachusetts for a question.

Mr. KENNEDY. I thank the Senator for really——

The PRESIDING OFFICER. The Senator from New York has the floor.

Mr. SCHUMER. Yes.

The PRESIDING OFFICER. Does the Senator yield for a question?

Mr. SCHUMER. I yield to my colleague from Massachusetts for a question only.

Mr. KENNEDY. Without losing his right to the floor.

Mr. SCHUMER. Without losing my right to the floor.

Mr. KENNEDY. Mr. President, first of all, I thank the Senator from New York for his presentation today. I want to ask him a question or two.

In looking at his position in the broader context—which I think is fair to do, which is important for the American people to understand—the debate on what institution should have the power for nominating judges was an issue that was before the Constitutional Convention.

I heard earlier in the debate that the Senator from New York pointed out this was an issue that was considered by the Constitutional Convention—to just have the sole power with the President—and that was overwhelmingly defeated—overwhelmingly defeated.

I ask the Senator whether he would not agree with me that at least it appears there are some Members of this body who still believe it is the President who has the sole power and kind of exercise of responsibility that the Senator from New York and others have attempted to provide in exercising an informed and balanced judgment in fulfilling their constitutional role of advice and consent.

Does the Senator not agree with me that any fair reading of the debates of the Constitutional Convention put a prime responsibility on the Senate of the United States to exercise good judgment? And, further, would he not agree with me that if there is not going to be a response to Senators' inquiries, so they cannot have the information to carry forward and make a judgment, then this is a failure of the nominee in meeting their responsibility under the Constitution, being nominated by the President of the United States?

Would the Senator not agree with me that this is a constitutional issue? We hear a great deal about what is constitutional and that the Senator from New York and others are basically undermining the Constitution by refusing to let the Senate make its will. On the other hand, I think the Senator, as I understand it, is doing exactly what the constitutional Founders intended the Senate to do; and that is, to have a shared responsibility and give a balanced and informed judgment in meeting the requirements of the advice and consent provisions of the Constitution.

I am just asking the Senator if he does not agree with me that we ought to have some understanding among at least ourselves as to what the role is because often we hear those voices saying, what are you objecting to? The President has nominated him. Why aren't you just going along? I would be interested in the Senator's answer.

Mr. SCHUMER. The Senator is right on the money. The bottom line is, the Founding Fathers wanted the Senate to be actively involved in the process. It is my understanding, as I read the Federalist papers and the deliberations of the Founding Fathers, for a good period of time they were so afraid of the President, so much like a king, having too much power and knowing that judges would have lifetime appointments and have absolute power, at least on the cases they rendered, that for a long period of time they wanted the Senate to appoint the judges.

Mr. KENNEDY. Without the President involved?

Mr. SCHUMER. Without the President involved, exactly. I can't remember if it was Madison or somebody else, but they argued it would be too diffuse, that the buck will have to stop somewhere, so they were going to have the President nominate. But to keep the President's power in check, the very thing they intended—my good friend from Massachusetts is exactly on the money—was that the Senate play an active role.

Let me repeat, many of the very first Senators who debated whether the first nominee, Mr. Rutledge, should become a judge on the Supreme Court were members of the Constitutional Convention. We heard today that of the first eight who showed up, six were members of the Constitutional Convention. I don't know how many out of the original 22 because I think there were just 11 States that had ratified the Constitution then. And guess what debate they had in rejecting Mr. Rutledge? They debated his views on the Jay treaty, which was a treaty involving France and England and all sorts of foreign entanglements, as they used to refer to it in those days.

Let me say that if the Jay Treaty was legitimate grounds to determine

whether the Senate should consent, then certainly someone's views on the commerce clause and the first amendment and the second amendment and the fourth amendment and the 11th amendment and the right to privacy and the right to free speech should be.

Let's just get some corroboration for my colleague's excellent question. Here is what our good friend from Utah said when the shoe was on the other foot, when President Clinton was nominating people, and many of our colleagues on the other side were worried they would be too activist, which meant too many people who would let their own liberal views trump accurate interpretation of the law. I have great respect for the Senator from Utah. He knows this stuff inside out.

He said:

> Determining which of President Clinton's nominees will become activists is complicated and it will require the Senate to be more diligent and extensive in its questioning of nominees' jurisprudential views.

Well, one day of hearings and no other record, is that extensive when one is considering a lifetime appointment? I would argue not. It is not even close to extensive enough.

Let me read another quote from Senator HATCH:

> The careful scrutiny of a judicial nominee is one important step in the process, a step reserved to the Senate alone . . . I have no problem with those who want to review these nominees with great specificity.

Well, I hope the Senator who had no problem then when Senator SESSIONS and Senator Ashcroft and other Senators on the Judiciary Committee wanted to ask a whole lot of questions—and believe me they did, of the people they were worried about, the Paezes and the Bersons, not to mention them, but all the nominees who never got hearings. Great specificity? Nine hours of hearings for the second most important job on the judicial side of the Government? Nine hours, when the answers, when talking about his history, Miguel Estrada was specific. It is not a character trait. It is only when he was asked his views on matters of great judicial importance, this is with great specificity, to simply say, on question after question: I will follow the law, is that answering questions with great specificity?

Mr. KENNEDY. Would the Senator yield on that point?

Mr. SCHUMER. I am happy to yield.

Mr. KENNEDY. Was the Senator trying to elicit from the nominee the outcomes of particular cases or was he inquiring of the nominee to have the nominee's general understanding of the particular provisions, constitutional provisions which are the basis for protecting individual rights and liberties? If you listen to the debate, some would say the members of the Judiciary Committee who were asking questions were trying to basically unethically demand answers of the nominee as to the outcome of particular cases. Nothing could be further from the truth. As I understand, what the Senator is talking about now is to try and gain an understanding about whether the nominee had an understanding of the core provisions of the Constitution and the protections of those core provisions and understood the context with which they were at least passed or considered and interpreted over time.

Mr. SCHUMER. I thank the Senator for his question. He is exactly right once again in terms of his question. No one said: How will you rule on this case that is now in the lower courts in DC. No one said, there is a case in Texas about a meat packing company that refuses to go along with what the FDA wants them to or the Department of Agriculture wants them to. No one asked even close to that degree of specificity.

When one asks, what is your view on the commerce clause and how expansively or narrowly it should be interpreted, what is your view on the first amendment—I asked him, for instance, how it would affect his view on campaign finance spending. These are not questions of specific cases. In fact, the Senator was off the floor when I mentioned that I have made inquiries of some of the legal ethicists in our country who make a living by interpreting the canons of the ABA, what a lawyer can and cannot do. Not one of them thought any of the questions even came close in terms of the level of specificity.

One might think that was just a ruse, that that was a way to avoid giving one's opinions. And when one sees the article that was in the Legal Times in 1986, where it was reported that at a Federalist society meeting, Judge Silberman, already a member of the DC Court of Appeals, suggested to prospective nominees that Ronald Reagan might nominate, don't answer the questions, that was the beginning. That was the seed we are now seeing bear its evil fruit, which is to stonewall. And basically the Senator was exactly right in his previous question, at least in my opinion, going back to the view that the President should appoint.

Do you know what these hearings would be? They would be hearings for show.

Mr. KENNEDY. Will the Senator yield for another point?

Mr. SCHUMER. I am happy to yield.

Mr. KENNEDY. I can remember the time when the nominees for the Supreme Court, nominated by Democrat or Republican Senators, when Senators actually gave the questions to the nominees. I used to do that for years and years so that the nominee would have an opportunity to think about these issues and be able to talk about the fundamental protections of the Constitution and constitutional rights. This was never viewed to be a game in the Judiciary Committee. It was to try to elicit from the nominee their understanding and the nature of their kind of commitment to core values. That was always the case.

Now we find, as the Senator has historically interpreted, we can never get the responses, the answers. I mentioned the other day about understanding what the roles are of these two institutions. There is an extremely important and vital responsibility on every Member of this body in exercising their judgment. It is a shared responsibility. I can understand the chairman of the Judiciary Committee would rather have it so it is just the President's responsibility. But that defies history and what our Founding Fathers wanted. This is a shared responsibility.

I again ask the Senator, how are we going to ever fulfill our responsibilities under the Constitution when the nominees are basically going blank, refusing to respond to members of the committee? I further ask the Senator, is he not concerned this is beginning to be a trend, in terms of nominees we are having now before the committee, where they believe they just don't have to respond?

Mr. SCHUMER. Yes.

Mr. KENNEDY. Would the Senator agree this isn't just a matter for the Senators from New York and Massachusetts, this is a matter for the American people? That is what our Founding Fathers, who were the architects of the greatest Constitution in the history of the world, intended: If we fail to exercise our rights on this, we fail our responsibilities under the Constitution? I feel that way very strongly. I just inquire of the Senator.

Mr. SCHUMER. I thank my colleague. Again, I completely agree with him on every one of the questions he has asked. I would like to cite for my colleagues this article I mentioned. It was in the Legal Times of April 22, 2002. Here is a quote from the article:

> President George Bush's judicial nominees received some very specific confirmation advice last week: ''Keep your mouth shut.''

That statement in that article makes a mockery, as my good friend from Massachusetts has stated in his question, of the U.S. Constitution. ''Keep your mouth shut.'' One has to ask: Why should you keep your mouth shut? It is not because there is anything unethical you did. I don't think Miguel Estrada has done anything unethical. It is not because you are ashamed of your history or of something that happened in your past. Why are these nominees being told to keep their mouth shut, if this article is true?

We all know why. Because the people who are advising them are afraid if they gave their whole views, they would be rejected not only by the Senate but by the American people. And then there would have to be something different. The Senator is exactly right. We are on the road to mutilating our Constitution. I believe in this document. The older I get, the more in awe I am of the Constitution. The Founding Fathers called this country ''God's noble experiment.'' I believe that.

America took my family as refugees from Europe a hundred years ago—a

little more than that. They were discriminated against; they could not have any kind of job; but they were given a chance. My father never graduated from college and his son is a Senator. This is an amazing place. It is not just in the way my teenage children would say it, but in the biblical sense, an awesome place, where the angels tremble before God in awe.

Part of that awe that we so cherish is the fact that we try to fulfill what the Founding Fathers wanted and wished. For an immediate political purpose, to put before the courts people who might be out of the mainstream, to make a mockery of the process by having three controversial court of appeals nominees appear on the same day so that two could not be questioned, to change by fiat the blue slip rule, which had been in existence for quite a while, and not debate and vote on what should happen on the blue slip rule—but to just change it—to then take a rule that had been in the Judiciary Committee since the Senator was on the Judiciary Committee before in 1979——

Mr. KENNEDY. It was before.

Mr. SCHUMER. The rule was even before he was chairman. It said you could debate an issue and not shut off debate, unless one member of the minority side—by the way, it wasn't written for a 10-to-9 minority; it could have been written for a 19-to-1 minority. On the Judiciary Committee some comity would have to reign. To take all these, and then this hearing, this nomination, where Miguel Estrada, being the good student he is, basically kept his mouth shut, I don't care how many thick books they put on the table. Read the answers, I say to my friends in America. Compare them to the answers of other judges, and then look at the fact that the only records we have of Miguel Estrada, his work as an Assistant Solicitor General, where we could determine how he thinks, other than by what he said at the hearing, where he didn't answer dispositively on anything in terms of his views—and the administration all of a sudden says we are not giving up such documents—it makes you scratch your head and wonder.

So I say to my colleague—and I will relinquish the floor in a minute—to me, this is not a fight over Miguel Estrada or Mr. Jeffrey Sutton or Judge Cook or John Roberts or Mr. Bybee or Mr. Tymkovich or any of the others; this is a fight for the sacredness of our Constitution. This is not the first time people who are a lot smarter than I am have tried to figure out ways around the Constitution and just say they are invoking the Constitution. That has happened repeatedly throughout our history.

But I believe, based on the patriotism that burns within me, based on my belief that this America still is ''God's noble experiment,'' it is our job to try to keep the flame of that Constitution burning brightly. Part of that flame is to have a full vetting of nominees for the one nonelected part of the Government, the article III part of the Government; and to rush nominees through and say they don't have any more time for a 40-year lifetime appointment, to say that they can answer every question by basically obfuscating, I believe in my heart of hearts is not what Madison or Hamilton or Jay or Washington or any of the Founders intended.

I yield for a final question to my colleague from Massachusetts.

Mr. KENNEDY. I thank the Senator. This will be my last intervention at this time. I wanted to ask whether this understanding and this presentation is your understanding, again, about the Constitutional Convention. I will take a moment. I ask him whether this is his understanding as well.

On May 29, 1787, the convention began its work on the Constitution with the Virginia Plan, introduced by Governor Randolph, which provided ''that a National Judiciary be established, to be chosen by the National Legislature.'' Under this plan, the President had no role at all in the selection of judges.

When this provision came before the convention on June 5, several members were concerned that having the whole legislature select judges was too unwieldy. James Wilson suggested an alternative proposal that the President be given sole power to appoint judges.

That idea had no support. Rutledge of South Carolina said that he ''was by no means disposed to grant so great a power to any single person.''

A week later, Madison offered a formal motion to give the Senate the sole power to appoint judges, and this motion was adopted without a single objection. On June 19, the convention formally adopted a working draft of the Constitution, and it gave the Senate the exclusive power to appoint judges.

July of 1787 was spent reviewing the draft Constitution. All the decisions having been made, this issue was revisited three different times. On July 18, the convention reaffirmed its decision to grant the Senate the sole, exclusive power. James Wilson again proposed ''that the judges be appointed by the Executive,'' and again his motion was defeated.

The issue was considered on July 21 and the Convention again agreed to the exclusive Senate appointment of judges.

In a debate concerning the provision, George Mason called the idea of executive appointment of Federal judges a ''dangerous precedent.''

Not until the final days of the Convention was the President given power to nominate. On September 4, 2 weeks before the Convention's work was completed, the committee proposed the President should have a role in selecting judges. It stated:

> The President shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . judges of the supreme Court. . . .''

The debates made clear, however, that while the President had the power to nominate the judges, the Senate still had a central role. Governor Morris of Pennsylvania described the provision as giving——

Mr. SCHUMER. Will the Senator yield?

Mr. KENNEDY. Let me read this. Governor Morris of Pennsylvania described the provision as giving the Senate the power ''to appoint Judges nominated to them by the President.'' The Constitutional Convention adopted this reworded provision giving the President the power, with the advice and consent of the Senate, to nominate and appoint judges.

It could not be clearer what our role is. It could not be clearer as to what the constitutional Founders wanted us to do.

I commend the Senator from New York for fulfilling that responsibility with regard to nominees. There are others who believe we ought to be a rubberstamp. The Senator from New York is speaking now to his responsibilities as outlined by our Founding Fathers. I welcome the opportunity to join with him. I commend him for his contribution to this debate.

Mr. SCHUMER. I thank my colleague. Again—and I am going to yield the floor; we have had it a long time—that sums it up: The central role is the Senate. Can the Senate engage in a central role, not the President—and we hear all the people who are criticizing what we are doing, saying the President should be able to choose. Those very same people want to be strict constructionists.

My colleague from Massachusetts, in outlining what happened at the Constitutional Convention, shows who are the real strict constructionists in this Senate today. It is those of us who are trying to make sure the Senate has some real say in who the judges are—not a hearing at nine at night, not failure to answer questions, not somebody who will not give up their whole record. This is a job for which we would have lines from here to Baltimore if we offered it to every lawyer in America. How many of them would say: I won't give up my records, or I won't come and answer your questions. This is a standard that perverts the views of the Founding Fathers.

Again, I say to the American people, why is it Miguel Estrada and those supporting him are so afraid that we learn of his views? If they are mainstream, if they are moderate, if they are not way off the deep end, would not release of documents, would not his answering questions without evasion vindicate him? But instead, we have had a 3-, 4-, 5-week battle to get simple answers out of a man who seeks to be appointed to the second most powerful court in the land that will affect every one of the 280 million Americans who are living today, their lives and the lives of their children and the lives of their grandchildren. My colleague is exactly right.

Mr. KENNEDY. Will the Senator agree, if I can ask him one other question, particularly seeing our leaders on the floor, would the Senator not agree with me that actually this is the wrong priority for the Senate to be debating for weeks and weeks when we have serious economic challenges facing this country, and I see our Democratic leader trying to get his proposal before the Senate, and the Republicans saying no; or to try and get a prescription drug program before the Senate. I do not know whether the Senator has had an opportunity to see the President's proposal which effectively says to the senior citizens they will no longer have the choice of their own doctor if they want to get the prescription drug they need. A prescription drug program should be part of the Medicare system and should not be a gift to the HMOs and the private insurance companies.

Would not the Senator finally agree with me that we have had this debate, and we ought to be debating the country's business in terms of our economic recovery, the issues of prescription drugs, or even the issue of going to war with Iraq?

Mr. SCHUMER. I thank my colleague for that question. First, I say to him, certainly, and let the American people who are watching today and everybody else understand the reason we have been on the issue of Miguel Estrada is not the choice of the Senator from Massachusetts, the Senator from New York, or our Democratic leader. It is the choice of the Republican side. It is the choice of the Senator from Tennessee.

Any moment—we do not control the floor; we are in the minority—any moment our friend from Tennessee, the majority leader, should say, Let's start debating how we are going to start getting jobs for the American people, more than 2 million of whom have lost jobs, any time the majority leader from Tennessee should say, let's debate prescription drugs, we would be off this issue of Miguel Estrada and debating those issues. I say to my colleague, as long as our colleagues insist on debating Miguel Estrada, I for one, and I speak, I think, for many of us, will not let the Constitution be rolled over, will not allow the very discussion that the good Senator from Massachusetts outlined, where it is clear the Senate should have more power than the President in appointing judges, be made a laughingstock. This document, the Constitution, is far too sacred.

It is my preference, to be honest, that the majority leader, the Republican leader from Tennessee say: Let's start debating other issues. It is his choice. But as long as he does not, I will be here at 10 of 4 in the afternoon or 10 of 4 in the middle of the night to defend this Constitution and prevent it from becoming a laughingstock because of some temporary whim of a small number of people in this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, the majority leader is here to propound a request. Let me make a couple of remarks, and I ask unanimous consent that I be able to retain the floor after he finishes with his request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, all I can say is the Pharisees of the meridian of time would have loved these arguments. In fact, they are very worthy of that type of reasoning that existed during the meridian of time of our society. To stand here and talk like they are supporting and sustaining the Constitution when they are saying Republicans think the President should have the sole power, nobody is arguing that. That is what you call another red herring along with their requests for documents that they know no self-respecting administration will give, as evidenced by the seven former Solicitors General, four of whom are Democrats, who said those documents should not be given because they would interfere with the work of the Solicitor General, the people's representative.

The fact of the matter is that the Founding Fathers—and I have enjoyed this wonderful discussion by the Pharisees of modern times, because to say we are arguing that only the President has some role here is not only ridiculous, it is ridiculously sublime. It is almost unbelievable for me to hear this as constitutional argument. Why, they would be thrown out of the Supreme Court and asked never to come back again by the liberals on the Supreme Court.

Madison himself offered a resolution to have a supermajority vote by the Senate, and it was rejected 6 to 3—rejected 6 to 3. The appropriate language is right here in article II of the Constitution. If we are going to talk about the Constitution, let's talk about the Constitution, not a bunch of gibberish. It says, talking about the President:

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur;—

That is a supermajority vote written in the Constitution, where supermajority votes should show up.

and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by Law vest the Appointment. . . .

But it says, ''by and with the advice and consent of the Senate.''

Here are my colleagues acting holier than thou, acting as constitutional experts, who are arguing that they should be able to sustain a filibuster that would require a supermajority vote out of that clause, which says advice and consent, which very clearly made it clear they are talking about an up-or-down vote. When Madison tried to get a supermajority vote, he was voted down. Madison, the Founder of the Constitution, was voted down 6 to 3.

These specious arguments, in my opinion, are not worthy of the Senate. There is a lot more I have to say, and I will complete my remarks after the majority leader takes the floor to make a unanimous consent request. I have never heard such arguments before as have been made throughout this afternoon, and I intend to answer some of them. It is not worthy of our time to answer all of them, but I am certainly going to answer some of them.

I respect my colleagues. It can be truthfully said I love my colleagues. People know that. And especially these two who have been arguing back and forth. But, again, they would have made wonderful Pharisees in the meridian of time because they would beat an issue to death even though the issue does not exist.

In this particular case, some of these arguments never existed in constitutional law or principle.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT AGREEMENT—S. RES. 71

Mr. FRIST. Mr. President, as in legislative session, I ask unanimous consent that at 4:20 p.m. today, the Senate proceed to the consideration of S. Res. 71 regarding the recent decision relating to the Pledge of Allegiance; provided further that no amendments be in order to the resolution or preamble, and that there then be 10 minutes for debate equally divided between the two leaders or their designees; that upon the use or yielding back of that time, the Senate proceed to a vote on adoption of the resolution without any intervening action or debate. I further ask unanimous consent that if the resolution is adopted, the preamble be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I ask the majority leader if it is his intention to schedule any additional votes today after we have had the vote on this particular resolution.

Mr. FRIST. Mr. President, that would be the final vote of the day, and that would be at 4:30.

Mr. DASCHLE. I thank the majority leader.

ELECTING WILLIAM H. PICKLE, OF COLORADO, AS SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE

Mr. FRIST. Mr. President, as in legislative session, I send to the desk a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The senior assistant bill clerk read as follows:

A resolution (S. Res. 72) electing William H. Pickle of Colorado as the Sergeant at Arms and Doorkeeper of the Senate.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 72) was agreed to, as follows:

Resolved, That William H. Pickle of Colorado be, and he is hereby, elected Sergeant at Arms and Doorkeeper of the Senate effective March 17, 2003.

Mr. FRIST. Mr. President, I welcome and introduce to my colleagues, which the Democratic leader and I have had the opportunity to do to our respective caucuses today, Bill Pickle, to be our new Sergeant at Arms, effective March 17. Currently, Bill is the Federal director at the Denver International Airport. He was the first director appointed when the Transportation Security Administration was created last year. Prior to that point, he served briefly as the Deputy Inspector General at the Department of Labor.

His real experience and career is with the Secret Service, which he served for a period of 26 years. He served in a number of senior manager positions, the most recent ones being Deputy Director for Training and Human Resources, Special Agent in charge of the Vice Presidential Division, and head of the Secret Service Congressional Affairs Office.

Bill is a highly decorated Vietnam veteran. He served with the first Air Cavalry Division from 1968 to 1969 as an infantry sergeant and medevac helicopter doorgunner. Mr. Pickle attended American University, as well as Metro State College in Denver, and holds a degree in political science. He is married and has two children.

Again, I welcome him to this body.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, first let me commend the distinguished majority leader for his choice in this proper position. In this time of uncertainty and with the experiences that the Senate has endured over the course of the last couple of years in particular, we are all the more sensitive about the role and the responsibilities of the Sergeant at Arms.

The Senate owes a big debt of gratitude to Al Lenhardt, the man who has filled this position so admirably for the last couple of years. He has endured, he has led, he has inspired. So we say farewell to Mr. Lenhardt, and we acknowledge once again the extraordinary contribution he has made not only to the Senate but to his country. I am proud of his work. I am proud to call him a friend.

I am pleased that Bill Pickle has agreed to take on this enormous responsibility. He comes extraordinarily well qualified. His experiences will serve him well as he begins to undertake the responsibilities and the expectations of the Senate as we look to the many challenges the Senate faces in dealing with security and the many other issues that will be on his desk as he holds this position. I congratulate him. I wish him well. I know I can say without equivocation that unanimously our caucus expresses our willingness to work closely with him as he begins his work in the Senate.

I thank the distinguished majority leader, and I yield the floor.

Mr. FRIST. Mr. President, I also want to add my appreciation to Al Lenhardt, our current Sergeant at Arms. I have had the opportunity to work with Al closely in that he came right before the time when anthrax first struck Washington, DC. I have had the chance to work with him on an intimate basis through that challenge and also over the last year and a half as he brought a current state-of-the-art discipline to that position to give the protection we depend on each and every day.

I had the opportunity to share my gratitude directly with the Democratic leader yesterday in his office as we met with Al and Bill Pickle.

UNANIMOUS CONSENT AGREEMENT—THE MOSCOW TREATY, DOCUMENT NO. 107–8

Mr. FRIST. Mr. President, I ask unanimous consent that at 12 tomorrow the Senate proceed to Executive Session to consider Calendar No. 1, the Moscow Treaty; provided further it be considered under the following limitation: The treaty be considered advanced through its various parliamentary stages, up to and including the presentation of the resolution of ratification; all recommended committee conditions and declarations be considered agreed to and provided further that all amendments to the resolution of ratification be relevant; further, that following the disposition of the relevant amendments and the conclusion of the debate on the resolution, the Senate then immediately proceed to a vote on the adoption of the resolution of ratification, as amended, with no further intervening action or debate, and that following the vote the President then be notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I want to turn to a final matter of business for me, and it concerns the subject of the Estrada nomination. I want to take a couple of minutes to comment on where we are today. This nomination, as my colleagues know, has been pending on the floor since February 5. It has been just about a month ago that the distinguished chairman of the Judiciary Committee brought forth this nomination. Over that period of time, we have had ample opportunity to have a very good debate. We have had a thorough discussion, and we have had thoughtful discussion, and we have had reasonable discussion. Both sides of the aisle, indeed, have been patient, recognizing the importance of this nomination.

We have listened very carefully to the arguments of the other side of the aisle to see if there is any way possible we could get an up-or-down vote, a vote to confirm or not to confirm, but to have the vote. The response to that has been a filibuster, which has been ongoing now, for an exceptional nominee.

Again, after a lot of time, a lot of focus, a lot of patience, a lot of thorough discussions, I feel it is time to give more definition to where we are in this nomination. Over this last month we have had 12 session days dedicated to the nomination. We have had active debate and discussion for over 85 hours. We have put forth 17 separate unanimous consent requests which have been denied. We have seen mounds of editorial support accumulate from across the country. The latest count, from 29 States and the District of Columbia, 72 editorials calling for the end of the filibuster and/or support of Miguel Estrada; only ten supporting the other side. We have had the McConnell-Miller letter which was signed by 52 Senators, indicating strong support for Miguel Estrada. We have had offers by the White House to make Miguel Estrada available to Senators who might want to visit with him one on one.

I outline that to demonstrate we are doing everything possible to achieve a very simple goal. That goal, consistent with the Constitution, consistent with the advice and consent, is to have an up-or-down vote on this nominee, allowing each Senator to express their will, either yes or no.

As I said, the time has come, after being patient, to give increased definition to the debate for people to actually stand up and be counted. I have been denied the only other means I have to reach a vote, and that is through unanimous consent. Thus I have to rely on my only alternative now. That is to generate a vote so that people in this body and indeed the American people can know where each Member stands. That vote will be filing cloture. I do want to point out that filing of cloture is intended to identify where individuals stand and in no way means any walking away from this nomination. In fact, it is just the opposite. If cloture fails, it is the real beginning, I believe, of this important debate that has been underway now for almost 30 days, but which we permitted to continue in order to have that up-or-down vote. If cloture is successful, which I hope, we will be able to go immediately to the vote and we will be able to have this nominee confirmed. If Democrats go on record through this vote as supporting an active filibuster, we and their constituents will be able to address each one of them and ask for an explanation.

Filing of cloture represents, in my mind, an active campaign to ensure this fine nominee ultimately is voted upon and thus will win because we know we have the majority votes for him to be confirmed. Thus, this is our first step.

By filing this cloture motion we will be, if unsuccessful, racheting up the attention level for this well-qualified

nominee. Members will have that opportunity to decide whether this man deserves that up-or-down vote I referred to. Members will get a chance to say whether the President of the United States deserves to have his nominee, the President's nominee, acted upon, voted upon, in this Senate—again, an opportunity for the President's nominee to have an up-or-down vote.

CLOTURE MOTION

With that said, I now send a cloture motion with 51 signatures to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 21, the nomination of Miguel A. Estrada to be United States circuit judge for the District of Columbia circuit.

Bill Frist, Orrin Hatch, Trent Lott, Bob Bennett, Peter Fitzgerald, Kay Bailey Hutchison, Lisa Murkowski, Conrad Burns, John Warner, John E. Sununu, Lindsay Graham, Jeff Sessions, Gordon Smith, Elizabeth Dole, James Talent, Saxby Chambliss, Christopher Bond, Susan Collins, Wayne Allard, Lamar Alexander, Norm Coleman, Pat Roberts, Craig Thomas, Larry E. Craig, Olympia Snowe, John McCain, James Inhofe, Jon Kyl, Lincoln Chafee, Rick Santorum, Judd Gregg, Don Nickles, George Allen, Richard G. Lugar, Charles Grassley, George V. Voinovich, Mike Crapo, Michael B. Enzi, Thad Cochran, Mike DeWine, Arlen Specter, Sam Brownback, Ben Nighthorse Campbell, Richard Shelby, Ted Stevens, Chuck Hagel, John Cornyn, Pete Domenici, John Ensign, Mitch McConnell, Jim Bunning.

Mr. FRIST. For the information of all Senators, this vote will occur Thursday morning. We will alert Members to the precise timing of this vote.

At this time, I ask unanimous consent the live quorum under rule XXII be waived.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

The Democratic leader.

Mr. DASCHLE. I listened carefully to the words of the distinguished majority leader and certainly understand his decision to file cloture. Many of us had anticipated a cloture motion would be filed. We are more than ready to have one or more votes when and if they are scheduled. Those votes, of course, would not be necessary were the information we requested from the beginning provided. We have simply asked that Mr. Estrada fill out his application for this lifetime employment, as every other one of his predecessors has, providing information about his record, providing information about his position, providing information in ways that will allow Senators a far better appreciation of the vote they are taking on this important matter prior to the time he begins serving on the second highest court in the land.

We welcome the vote. As I said, we will welcome subsequent votes if they are filed. We believe the constitutional obligation we have as Senators requires we demand the same degree of compliance to the rules, the same degree of willingness to cooperate that all those who have served in the past and have provided that information have been willing to provide in their cases, as well.

We will certainly anticipate that vote, the recognition that this debate goes on unnecessarily. It would not have to take 30 days. It would not have had to take 12 legislative days. It would not have had to take 85 hours for Mr. Estrada to be more forthcoming, more willing to provide the information his predecessors have provided.

I understand the actions just announced by the majority leader. But I will say it really does not change anything. The only thing that will change the circumstances we currently face is if Mr. Estrada becomes more cooperative and he fulfills his obligations under the Constitution, as his predecessors have so ably done for so many years.

I yield the floor.

Mr. HATCH. Mr. President, one thing it does establish is that there really is a filibuster by our colleagues on the other side. They have been denying this right up to now, so that is why we have to have a cloture vote to show that there is a filibuster; for the first time in history, a true filibuster against a circuit court of appeals nominee.

That is a constitutional issue and it is an important constitutional issue. I was really blown away by my colleague's assertion that we are trying to just make an imperial President. That is not at all the case. We know the Senate has an obligation to look at these judges. As a matter of fact, whenever we say we treated their judges better than they are treating Miguel Estrada, they are using a double standard on Miguel Estrada, and they say their judges were not controversial.

Give me a break. I will be willing to ask Miguel Estrada to give detailed answers to every question that was asked of Marsha Berzon, every question that was asked of Judge Paez, every question that was asked of Margaret Morrow. Those hearings lasted minutes. This lasted a solid day, more than most nominees in the history of the country for the Circuit Court of Appeals.

By the way, for those on the other side who keep trying to imply—I was interested in my words that were put up. What was wrong with those words? They were absolutely true. We should not have activist judges on the bench.

I disagree with their characterization that activist means anything but activist. I agree with Senator SCHUMER's discussion on activism. I don't like activism from the left and I don't like it from the right. I don't think it is right in either case. Activism is ignoring the law; using your judicial position to make laws from the bench that you were never nominated and confirmed to make.

Judges are not elected to make laws. The purpose of judges is to interpret the laws made by those of us who have to stand for reelection. We are the ones who make the laws. The President and the executive branch also can make laws.

But where in the Constitution, or in anything said by the Founding Fathers, does it say that a minority of the Senate has a right to prevent a vote up or down on a President's nominee? Nowhere.

In that provision I read, where does it say you can have a supermajority vote? In fact, the only supermajority vote mentioned in article II is the clause I read from, that is a two-thirds vote for the ratification of treaties. But in that same paragraph it said the Senate has a right to advise and consent on nominees.

Those words they put up of mine regarding activist judges, I don't see anything wrong with those words. They apply today, and I have always gone by them. But to imply that their judges were not treated properly when we put through 377 Clinton judges, the second all-time record in the history of the Senate, in the history of the nomination process, 5 less than the all-time champion Ronald Reagan, while 6 years the Judiciary Committee was in the control of the Republicans, the opposition party, where President Reagan had 6 years of his own party to assist him—and to act like that was not a remarkable job of fairness to President Clinton, again makes my point that these are modern-day Pharisees who would distort anything in order to make their arguments.

I would like to get to a couple of things that have really been a little irritating to me. I have heard a lot of whining about last week's Judiciary Committee markup where I had to rule we are not going to filibuster in committee and we were going to have votes up and down on the circuit court nominees.

I have also heard arguments that to have three nominees in one hearing is just awful. It has never been done before. I am going to talk about those two things just for a minute or two, because I think it is important to understand.

First of all, on that rule, I checked with our parliamentarians, two of them, in this body. They upheld me and told me I was right in the interpretation of the rules that I made. But the rule they are hiding behind is rule 4. They are saying that rule 4 prevented me from being able to call for a vote unless I got at least one member of the other side to agree.

By the way, each one of those judges had at least two members of the other side in agreement, so there is nothing to complain about, even then. But the text of rule 4 says this:

The chairman shall entertain a nondebatable motion to bring a matter before the committee to a vote.

A nondebatable motion. There was no motion made. There was a point of order raised which I overruled. There was an objection raised, which I overruled. Listen to this again:

> The chairman shall entertain a nondebatable motion to bring a matter before the committee to a vote.

There has to be a motion. That didn't happen.

> If there is objection to bringing the matter to a vote, without further debate a rollcall vote of the committee shall be taken and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with 10 votes cast in the affirmative, one of which is cast by the minority.

That is the rule that allows any Senator to make a motion to bring any matter to a vote, so long as that Senator has all of his own party and one, at least one from the other. It is not a rule that can be used to stop the chairman from having a vote and from ending debate, which had clearly ended, and to stop a filibuster in the committee.

So all this whining and crying about that is a total misinterpretation of the very expressly worded rule. You would think they were mistreated. Not at all. They were treated very fairly. They just want to be able to slow down this process so President Bush's judges do not get hearings, they don't get markups in committee, and when they come to the floor they are going to filibuster some of them—maybe all of them, for all I know.

By the way, their argument there is specious. It is wrong. It is irrelevant. It is a misinterpretation of the very rule they are citing. And it is unworthy because I happen to know that they checked with the parliamentarians who said I was right in what I did. And I was right in what I did.

With regard to their other argument attacking me for putting three circuit court of appeal nominees on one hearing, I put those three up in the spring of 2001. I was told by the Democrats they didn't want to go forward, that they would like me to give them a little more time. I agreed.

In the intervening time, Senator JEFFORDS decided to go independent and vote with the Democrats, and the committee chairmanship changed. So I was unable to bring them up at that time. They will have been sitting here for almost 2 years. These are some of the top appointees in the history of the judiciary. I might add that John Roberts has been sitting there for 12 years, three nominations by two different Presidents. It just plain is not right.

I might also add that, having been attacked for holding what a number of Members on the other side of the aisle called an unprecedented hearing because the agenda included three circuit court nominees, you might be interested to hear I have subsequently found out that January 29 hearing was the 13th time since President Carter's administration that this committee has considered more than two circuit nominees in a single hearing. The 13th time—not unprecedented, I would say. Hardly at all.

But that is not all I learned. One of those 13 hearings was chaired by Senator KENNEDY, who was then the committee chairman, on June 25, 1979. I was there. That included seven circuit judges.

What they throw out is: Well, they weren't controversial. I assure you that every Carter circuit judge was controversial. But there was a comity in the Senate then and there was also a 62-vote majority of the Democrats in the Senate versus 38 Republicans. But there was a comity, that people just didn't raise the kind of ridiculous arguments that are being raised today in the Judiciary Committee. I assure you, those were controversial nominees, but nobody complained about that because of the comity and also because of the overwhelming control of the Democrats. They knew they could get away with it, and they did. And nobody really raised a fuss about it.

They were all nominated by President Carter and all for the same circuit court of appeals. Talk about balance, which is what we are hearing right now from the other side.

Three weeks later, on July 18, 1979, Chairman KENNEDY held another hearing with four more Carter circuit nominees—all controversial—maybe not all but controversial ones again.

Then, on September 21 of that year, he held yet another multiple circuit hearing that included three circuit nominees. All three hearings occurred within a 4-month period. So it is all right for them to hold multiple circuit court nominee hearings, but it is an unprecedented thing for us. I agree, it probably is, because I do not know that we have ever been in charge long enough to do that before we held three.

But I know this, I held, I think, 11 or 13 two-nominee hearings when I was chairman, and Mr. Clinton, their President, was President. I certainly do not mean to single out my friend Senator KENNEDY, so I should also point out that when Senator BIDEN was chairman of this committee, he held two hearings that included three circuit nominees each; one on July 21, 1987, another on October 5, 1990. Senator Thurmond held five such hearings when he was chairman. And Senator Eastland, back in November 1977, who was chairman at that time, held a hearing for three circuit judges in one hearing. So much for the precedented.

Senator KENNEDY's advice and consent argument, while interesting, is wrong on the law and wrong on the facts. His argument ignores the basic underpinnings of the Senate's role in the advise and consent process.

In fact, I would submit that the other side's effort to demand Mr. Estrada's personal views on certain legal issues is itself an unconstitutional threat to the separation of powers inherent in our system of government and to the Framer's desire to maintain an independent judiciary.

It has never been the case that the Senate is constitutionally entitled to an answer to any question it chooses to ask a nominee while exercising its advise and consent responsibility. The reason for this is clear: the Framers sought to ensure that the judicial branch would remain independent of the legislative branch.

According to Federalist Papers 78, judicial independence ''is an excellent barrier to the despotism of the prince'' and ''in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body.''

For this reason, the Constitution prohibits Congress from reducing Federal judges' salaries, guarantees that judges will remain on the bench ''during good Behavior,'' and allows Congress to remove them only by impeachment. These protections were born of the Framers' fear that the federal legislature, like King George III before it, would pressure judges into reaching outcomes of which it approved, or that otherwise were consistent with its interests.

The Framers' intent to insulate Federal judges from the political influence of the legislative branch also informed their decision to restrict the role of the Senate in the confirmation process.

The Senate's limited function is apparent from the Constitution's very text. To state the obvious, the President holds the power to nominate candidates to the Federal bench, while the Senate's role is restricted to providing ''advice and consent.''

The Constitution assigns the Senate a limited role in the selection of judicial nominees; it simply allows that body to ratify the President's choices, or decline to do so. Put simply, the President selects, then the Senate reviews and reacts.

As Alexander Hamilton explained in the Federalist No. 66:

> There will, of course, be no exertion of choice on the part of the senate. They may defeat one choice of the Executive, and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice he may have made.

This is not to say that the Senate must act as a ''rubber stamp'' to a President's choices for the judiciary. As has been the case throughout history, the Senate is entitled to detailed information about a nominee's background, career and qualifications for the bench. And Mr. Estrada has provided ample information to allow the Senate to determine his qualifications.

First, it bears repeating that the American Bar Association unanimously rates Mr. Estrada ''Well qualified'' for this position. The Democrats' ''gold standard.''

Second, Mr. Estrada testified for a full day in the Senate Judiciary Committee on a range of subjects, and then answered within followup questions for committee members. It should be mentioned that only two members of the

committee decided to pose such questions.

Third, Mr. Estrada has received broad bipartisan support from lawyers who know him best, including former Clinton Solicitor General Seth Waxman,

Vice President Gore's former Chief of Staff Ron Klain, former Clinton Justice Department officials Randolph Moss and Bob Litt, as well as 14 former colleagues of his in the Solicitor General's Office. All have written glowing recommendations of Mr. Estrada.

Fourth, the Senate is free to review the briefs and other publicly available written work Mr. Estrada performed on behalf of clients in the more than 15 Supreme Court cases he has handled during his career. The record is voluminous.

All of this information is more than adequate to address Mr. Estrada's qualifications. however, this body must, in order to maintain the proper constitutional balance, refrain from seeking just the sort of information Mr. Estrada's opponents now demand: his personal views on legal issues.

Many distinguished Democrats have themselves noted that seeking personal views simply is inappropriate:

Justice Thurgood Marshall made this point in 1967, when he refused to answer questions at his confirmation hearing about the Fifth Amendment:

> I do not think you want me to be in the position of giving you a statement on the fifth amendment, and then, if I am confirmed and sit on the Court, when a fifth amendment case comes up, I will have to disqualify myself.

Lloyd Cutler, President Clinton's former White House Counsel who also was at the other end of Pennsylvania Avenue at the same time as the Senator from New York, disagrees with efforts to discern a nominee's ideology during the confirmation process. According to Mr. Cutler:

> It would be a tragic development if ideology became an increasingly important consideration in the future. To make ideology an issue in the confirmation process is to suggest that the legal process is and should be a political one. That is not only wrong as a matter of political science; it also serves to weaken public confidence in the courts. Just as candidates should put aside their partisan political views when appointed to the bench, so too should they put aside ideology. To retain either is to betray dedication to the process of impartial judging.

Former Senator Albert Gore, Sr. also believed that efforts to discern a nominee's personal views was inappropriate. Former Senator Gore noted the following in connection with the 1968 nomination of Abe Fortas:

> [A] judge is under the greatest and most compelling necessity to avoid construing or explaining opinion of the Court lest he may appear to be adding to or subtracting from what has been decided, or may perchance be prejudging future cases.

The Senate Judiciary Committee agreed with Senator Gore, noting the following in a Committee Report on the Fortas nomination that year:

> Although recognizing the constitutional dilemma which appears to exist when the Senate is asked to advise and consent on a judicial nominee without examining him on legal questions, the committee is of the view that Justice Fortas wisely and correctly declined to answer questions in this area. To require a Justice to state his views on legal questions or to discuss his past decisions before the committee would threaten the independence of the judiciary and the integrity of the judicial system itself. It would also impinge on the constitutional doctrine of separation of powers among the three branches of Government as required by the Constitution.

Finally, the ABA's Model Code of Judicial conduct also prohibits a nominee from discussing his personal views. Canon 5A(3)(D) of the ABA's Model Code of Judicial Conduct states that prospective judges ''shall not . . . make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of office . . . [or] make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court.''

Mr. Estrada's opponents in essence are asking him to violate this ethical cannon.

Mr. Estrada possesses an excellent record—one which merits confirmation. Efforts by the other side to deny him confirmation in the face of this excellent record are unfair and degrading to the confirmation process.

The arguments made by the other side are not constitutional, they are political. The other side knows that the Constitution prohibits this body from intruding on the independence of the judiciary, and from forcing candidates to provide us with their personal views on legal issues. I hope the Senate will reject these unconstitutional efforts and that we will vote soon to confirm Miguel Estrada.

During the course of this debate, there have been many serious misrepresentations of the record on Mr. Estrada. I want to address in some detail one of the more serious distortions, which concerns the answers that Mr. Estrada gave to questions that members of the Judiciary Committee asked him.

The charge being leveled against Mr. Estrada is that he did not answer questions put to him in general, and did not answer questions about his judicial philosophy in particular. This charge is pure bunk.

It is important to remember the circumstances under which this hearing took place. The hearing was held on September 26, 2001. It was chaired by my Democratic friend, the senior Senator from New York. It lasted all day. Both Democratic and Republican Senators asked scores of questions, which Mr. Estrada answered. And if any Senator was dissatisfied with Mr. Estrada's answers, every member of the committee had the opportunity to ask Mr. Estrada followup questions—although only two of my Democratic colleagues did.

Now, a number of the questions Mr. Estrada was asked sought, directly or indirectly, to pry from him a commitment on how he would rule in a particular case. Previous judicial nominees confirmed by the Senate have rightly declined to answer questions on that basis, just as Mr. Estrada did.

Let me give you some examples.

In 1967, during his confirmation hearing for the Supreme Court, Justice Thurgood Marshall responded to a question about the Fifth Amendment by stating:

> I do not think you want me to be in a position of giving you a statement on the Fifth Amendment and then, if I am confirmed and sit on the Court, when a fifth amendment case comes up, I will have to disqualify myself.

During Justice Sandra Day O'Connor's confirmation hearing, the Senator from Massachusetts, the former chairman of the Judiciary Committee, defended her refusal to discuss her views on abortion. He said:

> It is offensive to suggest that a potential Justice of the Supreme Court must pass some presumed test of judicial philosophy. It is even more offensive to suggest that a potential justice must pass the litmus test of any single-issue interest group.

Likewise, Justice John Paul Stevens testified during his confirmation hearing:

> I really don't think I should discuss this subject generally, Senator. I don't mean to be unresponsive but in all candor I must say that there have been many times in my experience in the last five years where I found that my first reaction to a problem was not the same as the reaction I had when I had the responsibility of decisions and I think that if I were to make comments that were not carefully thought through they might be given significance that they really did not merit.

Justice Ruth Baker Ginsburg also declined to answer certain questions, stating:

> Because I am and hope to continue to be a judge, it would be wrong for me to say or to preview in this legislative Chamber how I would cast my vote on questions the Supreme Court may be called upon to decide. Were I to rehearse here what I would say and how I would reason on such questions, I would act injudiciously.

Like these previous nominees, all of whom the Senate confirmed, Mr. Estrada refused to violate the code of ethics for judicial nominees by declining to give answers that would appear to commit him on issues that he will be called upon to decide as a judge. But again and again, he provided answers, in direct response to questions, that make his judicial philosophy an open book.

Let me share some specific examples.

Responding to a question to identify the most important attribute of a judge, Mr. Estrada answered that it was to have an appropriate process for decision making. That, he said, entails having an open mind, listening to the parties, reading their briefs, doing all of the legwork on the law and facts, engaging in deliberation with colleagues and being committed to judging as a

process that is intended to give the right answer. These are not extreme views. I don't think we could ask more from any judge.

When asked about the appropriate temperament of a judge, he responded that a judge should be impartial, open minded and unbiased, courteous yet firm, and one who will give ear to people that come into his courtroom. These are the qualities of Miguel Estrada. He testified that he is and would continue to be the type of person who listens with both ears and be fair to all litigants.

Mr. Estrada was asked a number of questions about his views and philosophy on following legal precedent. Let me highlight a bit of that exchange:

Question:

Are you committed to following the precedents of higher courts faithfully and giving them full force and effect even if you disagree with such precedents?

Answer:

Absolutely, Senator.

Question:

What would you do if you believe the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or the best judgment of the merits?

Answer:

My duty as a judge and my inclination as a person and as a lawyer of integrity would be to follow the orders of the higher court.

Question:

And if there were no controlling precedent dispositively concluding an issue with which you were presented in your circuit, to what sources would you turn for persuasive authority?

Answer:

In such a circumstance my cardinal rule would be to seize aid from any place where I could get it—related case law, legislative history, custom and practice, and views of academics on analysis of the law.

This exchange illustrates clearly Miguel Estrada's respect for the law and his willingness and ability to faithfully follow the law. He further testified, in response to other questions:

I will follow binding case law in every case. Even in accordance with the case law that is not binding, but seems instructive on the area, without any influence whatsoever from any personal view I may have about the subject matter.

This is what we expect judges to do. I can see no good reason why anyone would be opposed to a nominee who promised to follow the law.

When asked about the role of political ideology in the legal process, Mr. Estrada replied with a response that, in my view, was entirely appropriate and within the mainstream of what all Americans expect from their judiciary. He said:

[A]lthough we all have views on a number of subjects from A to Z, the first duty of a judge is to self-consciously put that aside and look at each case with an open mind and listen to the parties. And, to the best of his human capacity, to give judgment based solely on the arguments on the law. I think my basic idea of judging is to do it on the basis of law and to put aside whatever view I might have on the subject to the maximum extent possible.

When asked about his views on interpreting the Constitution, Mr. Estrada was forthright and complete in his responses. For example, in an exchange regarding the literal interpretation of the words of the Constitution, Mr. Estrada responded:

I recognize that the Supreme Court has said on numerous occasions in the area of privacy and elsewhere that there are unenumerated rights in the Constitution. And I have no view of any sort, whether legal or personal, that would hinder me from applying those rulings by the Court. But I think the Court has been quite clear that there are unenumerated rights in the Constitution. In the main, the Court has recognized them as being inherent in the right of substantive due process and the Liberty Clause of the 14th Amendment.

Mr. Estrada was asked questions about the appropriate balance between Congress and the courts. His answers make clear his view that judges must review challenges to statutes with a strong presumption of the statutes' constitutionality. For example, in responding to a question about environmental protection statutes, he stated:

Congress has passed a number of statutes that try to safeguard the environment. I think all judges would have to greet those statutes when they come to court with a strong presumption of constitutionality.

At the same time, he recognized that, as a circuit court judge, he would be bound to follow the precedent established by Lopez and other Supreme Court cases.

So, it is clear from the record that Mr. Estrada did answer the questions put to him at his hearing. His judicial philosophy is an open book. But if my Democratic colleagues are still inclined to vote against him—as misguided as I believe that choice to be—they should do so. Vote for him or vote against him; do what your conscience dictates. Just votes. And stop the unfairness of this filibuster.

And let me make one more point. Even if my colleagues still believe, despite the facts and precedent, that Mr. Estrada should answer more questions, well they have their chance. In a February 27 letter, White House Counsel Al Gonzales made the following offer.

Mr. President, I ask unanimous consent that a copy of this letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, February 27, 2003.

DEAR SENATOR FRIST, SENATOR DASCHLE, SENATOR HATCH, and SENATOR LEAHY: I write in connection with the nomination of Miguel Estrada. Some Democrat Senators have indicated that they would like to know more about Mr. Estrada's record before a vote occurs. As I stated in my letter of February 12 to Senator Daschle and Senator Leahy, we believe that the Senate has had sufficient time and possesses sufficient information to vote on Miguel Estrada. More important, a majority of Senators have indicated that they possess sufficient information and would vote to confirm him.

But if some Senators believe they must have more information before they will end the filibuster of this nomination, we respectfully suggest that there are three different and important sources of information that have been and remain available and that would appropriately accommodate the request for additional information. We ask that you encourage interested Senators to avail themselves of these sources as soon as possible.

First, as I have written to you previously, individual Senators who wish to meet with Miguel Estrada may and should do so immediately. We continue to believe that such meetings could be very useful to Senators who wish to learn more about Mr. Estrada's record and character.

Second, Senators who have additional questions for Mr. Estrada should immediately pose such questions in writing to him. We propose that additional questions (in a reasonable number) be submitted in writing to Mr. Estrada by Friday, February 28. Mr. Estrada would endeavor to answer such questions in writing by Tuesday, March 4. He would answer the questions forthrightly, appropriately, and in a manner consistent with the traditional practice and obligations of judicial nominees, as he has before.

Third, Senators who wish to know more about Mr. Estrada's performance and approach when working in the United States Government—and, in particular, how that relates to his possible future performance as a Circuit Judge—should immediately ask in writing for the views of the Solicitors General, United States Attorney, and Judges for whom Mr. Estrada worked and ask them to respond by Tuesday, March 4. In particular, interested Senators could immediately send a joint letter to each of the following individuals for whom Mr. Estrada has worked in the United States Government: Judge Amalya Kearse, Justice Anthony Kennedy, former United States Attorney Otto Obermaier, former Solicitor General Ken Starr, former Solicitor General Drew Days, former Solicitor General Walter Dellinger, and former Solicitor General Seth Waxman. In our judgment, these men and women could provide their views on Mr. Estrada's background and suitability to be a Circuit Judge by March 4 without sacrificing the integrity of the decisionmaking processes of the Judiciary, United States Attorney's office, and Solicitor General's office. And their views could assist Senators who seek more information about Mr. Estrada.

We believe that these sources of information, which have been available for some time, would readily accommodate the desire for additional information expressed by some Senators who have thus far supported the filibuster of a vote on this nominee. We ask that you encourage Senators who have objected to the scheduling of a vote to avail themselves of these sources of information. And we respectfully ask that the Senate vote up or down as soon as possible on Mr. Estrada's nomination, which has been pending for nearly two years.

Please do not hesitate to contact me with any questions.

Sincerely,

ALBERTO R. GONZALES,
Counsel to the President.

Mr. HATCH. To my knowledge, no Senators have taken advantage of this offer, which makes me question how serious they are about the merits of Mr. Estrada's nomination, which brings me to another point. Mr. Estrada's hearing was held under Democratic control of the committee on September 26, 2002. If

there was any question about the quality of Mr. Estrada's testimony, they could have held another hearing, since they controlled the committee for another 3 months.

My colleague from New York has stated that, according to an article that appeared in the Legal Times in April 2002, D.C. Circuit Judge Laurence Silberman has advised President Bush's judicial nominees to ''keep their mouths shut.''

In fact, as the rest of the article explains, Judge Silberman simply explained that the rules of judicial ethics prohibit nominees from indicating how they would rule in a given case or on a given issue—or even appearing to indicate how they would rule.

As the same article reported, Judge Silberman stated:

It is unethical to answer such questions. It can't help but have some effect on your decisionmaking process once you become a judge.

Mr. President, I ask unanimous consent that a copy of this article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUDGE NOMINEES TOLD TO SPEAK VERY SOFTLY

ON A PANEL LAST WEEK, SILBERMAN OFFERED SAME ADVICE HE GAVE ANTONIN SCALIA

(By Jonathan Groner)

President George W. Bush's judicial nominees received some very specific confirmation advice last week: Keep your mouths shut.

The warning came from someone who has been a part of the process: Laurence Silberman, a senior judge on the U.S. Court of Appeals for the D.C. Circuit, told an audience of 150 at a Federalist Society luncheon that he served as an informal adviser to his then-D.C. Circuit colleague Antonin Scalia when Scalia was nominated to the Supreme Court in 1986.

''I was his counsel, and I counseled him to say nothing [at his confirmation hearings] concerning any matter that could be thought to bear on any cases coming before the Court,'' Silberman said.

Silberman said his advice led to Scalia's speedy confirmation by keeping the nominee out of trouble on Capitol Hill. He also explained that the advice was intended to be rather far-reaching.

Scalia called Silberman at one point, the latter recalled, and told him he was about to be questioned about his views about *Marbury* v. *Madison,* the nearly 200-year-old case that established the principle of judicial review.

''I told him that as a matter of principle, he shouldn't answer that question either,'' Silberman said. He explained that once a prospective judge discusses any case at all, the floodgates open and he would be forced to discuss other cases.

''It is unethical to answer such questions,'' Silberman said. ''It can't help but have some effect on your decision-making process once you become a judge.''

In contrast, Silberman said, ''my friend Bob Bork'' ventured into the legal thickets and suffered for it. Bork ''thought he could turn the confirmation process into a Yale Law School classroom,'' Silberman explained.

The Supreme Court nomination of Robert Bork, also a D.C. Circuit judge, was defeated in 1987, party because Bork expressed controversial views in this writings and on the stand.

Silberman went on to say that for many nominees, landing a judgeship might not be the best result. Referring to a recent Supreme Court decision not to review a case brought by judges seeking pay raises, Silberman said that anyone who is not already wealthy ''faces an immediate decline in his or her real income'' if seated on the federal bench.

''The first prize is not to get a hearing,'' he noted. ''The second prize is to get a hearing and not to be confirmed. The third prize is to get confirmed.''

Other panelists at the Federalist Society's discussion on judicial independence were Sen. Joy Kyl (R–Ariz.), former presidential counsel Fred Fielding of Wiley Rein & Fielding, and moderator Stuart Taylor Jr. of National Journal.

Mr. HATCH. This advice is consistent with Canon 5A(3)(d) of the ABA's Model Code of Judicial Conduct, which states that prospective judges:

shall not . . . make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of office . . . [or] make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court.

Justice Thurgood Marshall made the same point in 1967, when he refused to answer questions about the Fifth Amendment during his confirmation hearing for the Supreme Court. He said:

I do not think you want me to be in the position of giving you a statement on the fifth amendment, and then, if I am confirmed and sit on the Court, when a fifth amendment case come up, I will have to disqualify myself.

Mr. President, my remarks make it very clear that they were controversial nominees and these arguments are not worth the time they have taken to make them. I think it is time to quit making the very same type arguments and start talking about the truth.

The truth is, we have a filibuster on our hands. One of the Democratic Senators even said on network TV 2 weeks ago they are not filibustering. Well, now we know they are. So let's let everybody in the country know that a double standard is being applied to Miguel Estrada.

EXPRESSING SUPPORT FOR THE PLEDGE OF ALLEGIANCE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. Res. 71.

Mr. REID. Mr. President, I have no objection to the Senator, the chairman of the Judiciary Committee, using his 5 minutes any way he wants. I will reserve the 5 minutes for Senator LEAHY and the majority leader.

Mr. HATCH. Mr. President, I see the distinguished Senator from Alaska is in the Chamber.

The PRESIDING OFFICER. Does the Senator yield the floor?

Mr. HATCH. I reserve my time.

Mr. REID. Mr. President, this resolution, which resolves that the Senate strongly——

The PRESIDING OFFICER. Will the Senator permit the clerk to report the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 71) expressing support for the Pledge of Allegiance.

The Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I support what I am confident the Senate's position will be, to strongly disapprove the decision of the panel of the Ninth Circuit in the Newdow case and the decision of the full court not to consider this case en banc.

The reason I wanted the floor for a few minutes this afternoon is there have been statements made today by the majority that the whole problem with the Pledge of Allegiance case has been caused by Democratic appointees. There could not be anything further from the truth.

The original Ninth Circuit panel opinion holding that the Pledge of Allegiance violated the first amendment was authored by a person who was appointed by a Republican President. Several Ninth Circuit judges, nominated by Republican Presidents, such as Judges Trott, Rymer, and Nelson, did not join in the dissent that criticized the original petition. Before the Ninth Circuit, they were holding a hearing to determine if they would rehear this. That would have been something that would support the position we are taking here on the Senate floor today.

Now, Mr. President, listen to this. The majority of the judges who we know voted to rehear the case en banc—and the only reason we are able to determine this is because of dissenting opinions filed, because the hearing was, in effect, off the record—were, in fact, Clinton appointees. Six out of nine dissenting judges were Clinton nominees.

So, Mr. President, simple arithmetic says there were 24 active sitting judges who were allowed to vote on this rehearing. If we had seven of the Republican nominees, there would have been a majority, and there would have been a rehearing. I repeat, if we had seven judges, who were appointed by Republicans, together with the six judges who were appointed by President Clinton, there would have been a rehearing.

So let's decide this matter, not on what we do not know but what the facts are. Six of the nine dissenting judges were Clinton nominees. These six judges, appointed by Clinton, either authored or joined dissenting opinions that advocated for a rehearing of the Newdow case by an en banc panel.

So, Mr. President, I disagree with what the Ninth Circuit did, but let's not blame it on judges appointed by Democratic Presidents. In fact, the reverse is true.

Mr. HATCH. Mr. President, I yield 2 minutes to the distinguished Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska.

AMENDMENT NO. 249

Ms. MURKOWSKI. Mr. President, I have a technical amendment at the desk to S. Res. 71. I ask unanimous consent that it be in order at this time, and I send it to the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska (Ms. MURKOWSKI) proposes an amendment numbered 249:

On page 3, line 7 of the resolution strike ''again'' and insert ''either''

On page 3, line 9 of the resolution strike ''and, if unable to intervene,'' and insert ''or''

Ms. MURKOWSKI. Mr. President, I ask unanimous consent that the amendment be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 249) was agreed to.

Ms. MURKOWSKI. Mr. President, I ask unanimous consent that the list of 43 cosponsors be added to my resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. MURKOWSKI. Mr. President, I think all of us can agree that last week's decision by the full Ninth Circuit refusing to review an earlier decision that bars children in public schools from voluntarily reciting the Pledge of Allegiance was fundamentally wrong.

Unfortunately, citizens in the States who are within the Ninth Circuit's jurisdiction have had to contend for decades with the court's dysfunctional jurisprudence. The pledge decision highlights how out of touch this court is from common sense and constitutional values. We who live within the court's jurisdiction know that the judges on this court too often ignore the law and the Constitution and, instead, seek to substitute their values for constitutional values.

I think Judge O'Scannlain, writing for six judges in dissent, said it best. He called the panel decision:

> wrong, very wrong—wrong because reciting the Pledge of Allegiance is simply not a ''religious act'' as the two-judge majority asserts, wrong as a matter of Supreme Court precedent properly understood, wrong because it set up a direct conflict with the law of another circuit, and wrong as a matter of common sense.

The judge went on to say: ''If reciting the pledge is truly 'a religious act' in violation of the Establishment Clause, then so is the recitation of the Constitution itself, the Declaration of Independence, the Gettysburg Address, the National Motto or the singing of the National Anthem,'' a verse of which says: ''And this our motto: In God is our trust.''

I have no doubt that the Supreme Court will hear the appeal of this case. And if one considers that the Ninth Circuit is the court with the highest reversal rate in the country, I expect the Court will summarily overturn this ill-conceived decision.

I urge all of my colleagues to support the resolution.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Ms. MURKOWSKI. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I compliment the distinguished Senator from Alaska for her work in this regard and for getting so many cosponsors in such a short period of time.

A panel in the Ninth Circuit declared the Pledge of Allegiance to be unconstitutional. This is so, two of the three judges decided, because it contains the words ''under God.'' It did not matter to the judges that these two words endorse no particular religion or denote any specific being. Nor did it matter to the majority that no student is required to recite these words—much less any other portion of the Pledge of Allegiance. And worse yet, the majority completely failed to explain how its remarkable ruling could be squared with out government's long-established reference to God in other areas.

The United States Supreme Court begins each session with the phrase: ''God save the United States of America and this Honorable Court.'' ''God Bless America'' is routinely sung at many Government functions. And this body not only elects a Chaplin, but also has begun every session for 207 years with a prayer.

This activist ruling is—as so many of the Ninth Circuit's rulings have been—bad law. It is flatly inconsistent with a unanimous, decade-old ruling of the Seventh Circuit, where the court held that ''schools may lead the Pledge of Allegiance daily, so long as pupils are free not to participate.'' The Ninth Circuit disagreed, citing the supposed ''coercive effect'' on a child from being required to listen every day in school to the phrase ''one nation under God.'' And from this purported coercion, the Ninth Circuit went on to divine unconstitutionality. This is truly a remarkable feat of judicial activism.

This country was founded on religious freedom by founders, many of whom were deeply religious. For this reason, the first amendment does not prohibit religion, but an ''establishment'' of religion. In fact, it also plainly guarantees to each American the freedom of religion and the free exercise of religion. As every court prior the Ninth Circuit's decision has recognized, the mere reference to a higher being does not amount to a religious act or a formal religious observance.

The Ninth Circuit is the biggest and most ungainly federal circuit court of appeals. It is also a court that is seriously out of balance, with 17 of its 24 active judges appointed by Democratic Presidents. The Ninth Circuit is also the most reversed circuit court of appeals in the nation—by a wide margin. I would like to say that rulings like Newdow represent an anomaly, but I can't do that because there have been so many other recent rulings in the Ninth Circuit that were unanimously reversed by the Supreme Court.

I fully expect the Supreme Court to review this decision and, yet again, reverse the Ninth Circuit and set this ludicrous ruling right. While we wait for that to happen, however, millions of students in the Ninth Circuit will be prevented from pledging allegiance to our flag and our Nation. It is truly regrettable that they will be prevented from doing so at a time when our Nation is under attack by terrorists and when we particularly need everyone to come together and support our President and our troops all over the world.

It is about time we let the Ninth Circuit Court of Appeals know, as the most reversed court in the country, that they really ought to think twice before they do something like this. Just think about it. The Constitution does not prohibit religion; it prohibits the establishment of religion. In fact, it plainly guarantees to each American the freedom of religion and the free exercise of religion.

As every court prior to the Ninth Circuit decision has recognized, the mere reference to a Higher Being does not amount to a religious act or a formal religious observance. The Ninth Circuit is the largest and most ungainly Federal circuit court of appeals.

It is also a court that is seriously out of balance, with 17 out of its 24 active judges appointed by Democratic Presidents. Thirteen of those 17 were appointed by President Clinton. And the Ninth Circuit is also the most reversed circuit court of appeals in the Nation—by a wide margin.

The PRESIDING OFFICER. Time controlled by the Senator from Utah has expired.

Mr. HATCH. Let me just say, this is a very important resolution. It shows how important it is to have good judges on the bench rather than activists. This decision was made by activists.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the resolution, S. Res. 71, as amended.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FRIST. I announce that the Senator from New Mexico (Mr. DOMENICI), and the Senator from Kentucky (Mr. MCCONNELL) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from

Louisiana (Ms. LANDRIEU) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY) would each vote ''Aye''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 39 Leg.]

YEAS—94

Akaka	DeWine	Lugar
Alexander	Dodd	McCain
Allard	Dole	Mikulski
Allen	Dorgan	Miller
Baucus	Durbin	Murkowski
Bayh	Ensign	Murray
Bennett	Enzi	Nelson (FL)
Biden	Feingold	Nelson (NE)
Bingaman	Feinstein	Nickles
Bond	Fitzgerald	Pryor
Boxer	Frist	Reed
Breaux	Graham (SC)	Reid
Brownback	Grassley	Roberts
Bunning	Gregg	Rockefeller
Burns	Hagel	Santorum
Byrd	Harkin	Sarbanes
Campbell	Hatch	Schumer
Cantwell	Hollings	Sessions
Carper	Hutchison	Shelby
Chafee	Inhofe	Smith
Chambliss	Inouye	Snowe
Clinton	Jeffords	Specter
Cochran	Johnson	Stabenow
Coleman	Kennedy	Stevens
Collins	Kohl	Sununu
Conrad	Kyl	Talent
Cornyn	Lautenberg	Thomas
Corzine	Leahy	Voinovich
Craig	Levin	Warner
Crapo	Lieberman	Wyden
Daschle	Lincoln	
Dayton	Lott	

NOT VOTING—6

Domenici	Graham (FL)	Landrieu
Edwards	Kerry	McConnell

The resolution (S. Res. 71), as amended, was agreed to, as follows:

S. RES. 71

Whereas a 3-judge panel of the Ninth Circuit Court of Appeals has ruled in *Newdow v. United States Congress* that the words ''under God'' in the Pledge of Allegiance violate the Establishment Clause when recited voluntarily by students in public schools;

Whereas the Ninth Circuit has voted not to have the full court, en banc, reconsider the decision of the panel in *Newdow*;

Whereas this country was founded on religious freedom by the Founding Fathers, many of whom were deeply religious;

Whereas the First Amendment to the Constitution embodies principles intended to guarantee freedom of religion both through the free exercise thereof and by prohibiting the Government establishing a religion;

Whereas the Pledge of Allegiance was written by Francis Bellamy, a Baptist minister, and first published in the September 8, 1892, issue of the Youth's Companion;

Whereas Congress, in 1954, added the words ''under God'' to the Pledge of Allegiance;

Whereas the Pledge of Allegiance has for almost 50 years included references to the United States flag, the country, to our country having been established as a union ''under God'' and to this country being dedicated to securing ''liberty and justice for all'';

Whereas Congress in 1954 believed it was acting constitutionally when it revised the Pledge of Allegiance;

Whereas the 107th Congress overwhelmingly passed a resolution disapproving of the panel decision of the Ninth Circuit in *Newdow*, and overwhelmingly passed legislation recodifying Federal law that establishes the Pledge of Allegiance in order to demonstrate Congress's opinion that voluntarily reciting the Pledge in public schools is constitutional;

Whereas the Senate believes that the Pledge of Allegiance, as revised in 1954 and as recodified in 2002, is a fully constitutional expression of patriotism;

Whereas the National Motto, patriotic songs, United States legal tender, and engravings on Federal buildings also refer to ''God''; and

Whereas in accordance with decisions of the United States Supreme Court, public school students are already protected from being compelled to recite the Pledge of Allegiance: Now, therefore, be it

Resolved, That the Senate—

(1) strongly disapproves of a decision by a panel of the Ninth Circuit in *Newdow*, and the decision of the full court not to reconsider this case en banc; and

(2) authorizes and instructs the Senate Legal Counsel again to seek to intervene in the case to defend the constitutionality of the words ''under God'' in the Pledge, and, if unable to intervene, to file an amicus curiae brief in support of the continuing constitutionality of the words ''under God'' in the Pledge.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent that I be recognized for 5 minutes to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. I thank the Chair.

THE CITY OF CHICAGO AND SIS DALEY

Mr. DURBIN. Mr. President, today marks the 166th birthday of the city of Chicago, and it would have been the 96th birthday of a great Chicago legend, Eleanor ''Sis'' Daley. I would like to talk about each briefly.

On March 4, 1837, Chicago was incorporated as a city with a population of 4,170 by the Illinois State Legislature. Today, Chicago is one of our Nation's largest and most vibrant cities, with 2.9 million residents, and it remains a vital center of business, finance, education, the arts, sports, and tourism.

Chicago's early history is a great American story of a great city, from Father Marquette to du Sable, a Haitian immigrant, in the 17th and 18th centuries, to Fort Dearborn, Northwestern University, Abraham Lincoln's Presidential nomination, the Chicago fire, and the World's Columbian Exposition in the 19th century.

In fact, ''City of The Century,'' a book and a documentary, detailed this city's humble beginnings and chronicled the development of the ''city that works.'' Chicago's modern history is synonymous with one family, the Daley family. Mayor Richard J. Daley was elected a record six consecutive terms and served 21 years in city hall. His son, Richard M. Daley, was reelected Chicago mayor last week and will shortly begin his 15th year in office. A Daley has been mayor of Chicago for 34 of the past 50 years.

The family glue was well-known to be Eleanor ''Sis'' Daley, the current mayor's mother and the wife of the former mayor for over 40 years. Today would have marked Sis Daley's 96th birthday. She shared a birthday with the city of Chicago. Sadly, Sis Daley passed away in her Bridgeport home on February 16, leaving behind 6 surviving children—Mayor Richard M. Daley, former U.S. Commerce Department Secretary Bill Daley, Cook County Commissioner John Daley, and Michael, Patricia, and Mary Carol; in addition, 20 grandchildren, including John Daley, a member of my Governmental Affairs Committee staff; a number of great grandchildren, and many admirers.

Much has been said and written about Sis Daley in recent weeks, a devoted mother, a loyal fan of the Chicago White Sox. She was really devoted to her family more than anything. She raised all seven kids in what was originally a bungalow in Bridgeport, a section of Chicago which was built by her and her husband in 1939. During her husband's first election night victory in 1955, the mayor-elect and his wife Sis abruptly ended the celebration party, packed up the kids, and headed home at 10:15 and said, it is bedtime at the Daley home.

Sis Daley was not afraid to speak her mind when it was necessary. When an unflattering book about her husband appeared in a local grocery store in 1971, she was offended and she asked the store manager to remove it, after she turned around the book so people could not read the cover. He and the entire chain removed it, but not before it became a national story, bringing a lot more money to the author, but Sis Daley had stood up for her family, as she did every single day.

In 1972, she very publicly appealed for the restoration of the main Chicago library building, an 83-year-old structure targeted for demolition by the mayor, her husband. The building was saved, and today it serves as the Chicago Cultural Center. She greeted queens and presidents, politicians and stars, never forgetting where she came from.

The last time I saw her was with her son Bill Daley, at a little gathering for Hillary Clinton in the city of Chicago. It was great to see that warm Irish smile on her face. In turn, Eleanor ''Sis'' Daley will never be forgotten in Chicago and in the hearts and minds of her family and those who knew her. It is fitting that the city of Chicago shares its birthday with Sis Daley.

I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Kansas.

Mr. BROWNBACK. Madam President, I ask unanimous consent to speak as in morning business for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PAKISTAN'S COOPERATION IN THE WAR ON TERRORISM

Mr. BROWNBACK. Madam President, I draw the attention of my colleagues to an event that happened yesterday which was very impressive—catching a key terrorist in Pakistan. It was the front page top story in virtually all of our newspapers around the country, probably around the world, with his picture. This is a person we have sought for some period of time. This was a big catch.

I do not want to focus on the individual. What I want to focus on is the cooperation we received from Pakistan and from the Pakistani authorities in making this possible. This capture could lead us to many more terrorists in the al-Qaida network who plague us, and it is very important for us.

I particularly want to thank the Pakistani authorities, the Pakistani Government, President Musharraf, and others who helped in this cooperation to get this done.

President Musharraf and his government, in facing a population in Pakistan that is frequently not pro United States, has worked very closely and very carefully with us in dealing with terrorists and now has yielded one of the largest, if not the largest, terrorist captures we have had in recent times, if not in recent memory altogether. That is something we should take note of, and we should be appreciative of those who have cooperated with us. Not all governments around the world cooperate with the United States. Not all are in as difficult a situation as Pakistan is where a substantial portion of the population does not want their government to be working with the United States, and yet we had the two come together taking on the issue of terrorism, even though it is difficult in their own country to do it, and we netted a major terrorist capture. We still want and we are still looking for, if he is alive, which he apparently probably is, Osama bin Laden, but second to him, this is probably the largest capture we could ask to have taken place.

I appreciate the indulgence of my colleagues. I do say thank you to the Government of Pakistan for its help in this capture of a major operative in the war on terrorism.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent the Senate proceed to a period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

2003 WOMEN IN SPACE CONFERENCE

Mr. DASCHLE. Madam President, I want to announce a very exciting event taking place this evening in my hometown of Aberdeen.

Tonight, in conjunction with the 2003 Women in Space Conference, Northern State University will host NASA astronaut, Dr. Karen Nyberg. Originally from neighboring Minnesota, Dr. Nyberg received her undergraduate degree at the University of North Dakota and her doctorate in mechanical engineering from the University of Texas. After finishing her education she worked for NASA, where she was granted a patent for work done on a robot assembly. Dr. Nyberg also worked extensively on improving the internal thermal control system of the space suits used by the astronauts. In July of 2000, she was selected in to the astronaut program, and she is awaiting an assignment on a future space flight as a mission specialist.

The tragic loss of the *Columbia* space shuttle on February 1 demonstrated to all Americans the dangers inherent to space exploration. However, the exciting opportunities space exploration presents require us to push forward, take risks and broaden our horizons by emulating the courage and fortitude demonstrated by the crew of the *Columbia*. As the President stated in his address to the nation, ''Mankind is led into the darkness beyond our world by the inspiration of discovery and the longing to understand. Our journey into space will go on.''

Thank you, Dr. Nyberg, for taking the time to visit Aberdeen and share your experiences and knowledge. To all the attendees and organizers, I wish you the best and congratulate you on what I am sure will be a successful and inspiring conference.

A KOREAN GOVERNMENT BAILOUT

Mr. HATCH. Madam President, I rise today as a longstanding proponent of free international trade. I am confident that if given the chance, U.S. companies that operate in the global marketplace will set the standard by which all international business will be conducted. This fact has been proven over-and-over again. Many great American owned companies are conducting business all over the world. I am a strong believer that these U.S. companies that operate in the global marketplace have a direct and positive impact world wide on consumers by allowing them competitive pricing and variety of choices in an increasingly discerning global market.

This benefit to society, however, is only as good as the business practices employed by foreign-owned companies. U.S. companies must operate in a competitive market that requires them to continue to innovate, cut costs, and effectively market their products. This is not always the case in certain industries in some foreign markets. In particular, I'd like to point out an important problem facing one of the largest employers in my State of Utah. Micron Technologies, the largest U.S. producer of D–RAM semiconductors, long has been plagued with unfair competition from its principal Korean competitor, Hynix, a company that has time and time again employed illegal government financed bail-out schemes to keep them in business.

This is not the first time that Micron has faced difficulties due to unfair trade practices. In the mid-1980s, Micron almost went out of business because of dumping by Japanese companies. Several of us in the Senate worked successfully to help put a stop to the illegal dumping. Ultimately, the Department of Commerce imposed duties that offset this dumping and Micron was not only able to survive, but eventually to become the second largest producer of semiconductors in the world today.

Micron has a very large facility in Lehi, Utah, that has employed over 500 of Utah's skilled laborers. This facility has the capacity of employing well over 5,000 people—a feat that will never be realized if the Korean Government is allowed to continue to subsidize Hynix.

It is important to point out that, just last December, Hynix received yet another direct financial bailout from the government of Korea. This practice must simply not be allowed to continue. Companies that operate in the global marketplace must be assured that they will be able to compete on a level playing field—and not against government-subsidized companies that may produce a substandard product, but are allowed to continue their operations because of an artificial infusion of operating capital. These illegal subsidies are costing the U.S. jobs and are weakening our technology base.

Let's examine the underlying facts about the trade distorting practices that Micron faces when competing in the world market.

Since October 2000, the government of Korea, acting through the banks that it owns and controls, has provided an astounding $16 billion in subsidies to Hynix, a Korean producer of D–RAM semiconductors and the principal global competitor to Micron Technologies.

Hynix is a company with massive debts resulting from the easy lending practices of Korean banks during the late 1990s. With these preferential loans, Hynix built substantial new capacity and became the third largest D-RAM producer in the world.

Starting in late 2000, Hynix became unable to repay the principal and interest on these loans and bonds. Rather than letting Hynix undergo formal bankruptcy, which would have resulted in substantial asset sales and restructuring, the Government of Korea orchestrated no less than five separate bailouts.

These subsidies have permitted Hynix to stay in business and that

company continues to run all its D–RAM labs full out, flooding the market with subsidized products. Despite all these subsidies, Hynix continues to lose money—by all accounts, roughly $8 billion over the past three years.

And yet, the Korean government continues to pour money into this company. Just two month ago, there was another bailout amounting to $4.1 billion. This is almost twice Hynix's revenues in all of 2002, which only amounted to $2.4 billion.

The Korean government must not be allowed to continue to underwrite the horrendous operating losses of this company as it has done for the past three years.

In the highly competitive D–RAM market, subsidies of this sort act as a trade distorting measure. Every other D–RAM company in the world is being crippled by the subsidized D–RAM that Hynix floods the market with. This has resulted in the worst and longest downturn the D–RAM sector has ever experienced.

Just last week, Micron announced that it was laying off ten percent of its worldwide workforce. This translates into 1,800 lost jobs in the United States. Hynix subsidies have had a real impact on Micron's bottom line as well—the subsidies have impacted pricing to such an extent that even Micron, one of the most efficient D–RAM producers in the world, has lost two billion dollars over the past two years. We cannot afford to see an important technology like D–RAMs lost in the United States, because of foreign government subsidies.

These sorts of subsidies have absolutely no place in today's global economy, particularly as we are engaged in a new round of trade talks aimed at further liberalizing trade regimes around the world.

All indications are that Hynix will use the debt forgiveness to continue to expand capacity. Just last week, Hynix announced that it would begin work on a new fabrication line to produce D–RAMs on state-of-the-art 300 mm wafers, which will result in even more subsidized D–RAM from Hynix. Now, we read in the papers that Hynix and other Hyundai companies are being investigated for illegally transferring about $500 million to North Korea in 2000, in return for lucrative contracts, and it did so with the help of South Korean banks and with the approval of the President of South Korea. This is the country that plans to reactivate its nuclear arms program.

In closing, I feel it incumbent upon me to point out that many Members of the United States Senate are paying close attention to the Korean Government's business practices as they relate to Hynix. Korea is one of the most developed economies in Asia and is a good friend to the United States in a wide variety of ways. But the government of Korea must realize that this type of illegal subsidy runs contrary to all the rules in the WTO and is not permitted under U.S. trade law. I call upon the Secretary of Commerce and the U.S. Trade Representative to help put an end to these illegal acts.

Mr. FEINGOLD. Madam President, I want to speak briefly on the clear violation of Judiciary Committee rules that occurred last week in our executive business meeting. It was a sad moment for our committee and does not bode well for the harmonious functioning of the committee this year. I believe that a discussion of this issue is also relevant to our debate of Miguel Estrada. In both cases we are talking about rules that protect the rights of the minority in this body from being run over by the majority. And in both cases we are talking about the use of those protections by the minority not to stonewall or block action by the majority indefinitely but to seek information about nominees that has not been forthcoming.

Let me quickly review the background of what happened last Thursday. All of this goes back, of course, to our duty under Article II, Section 2 of the Constitution, which specifically provides that the President shall appoint judges to our courts ''by and with the Advice and Consent of the Senate.'' The Senate's role is not just a matter of historical tradition, or comity with the Executive Branch, it is constitutionally mandated. All of us on the Judiciary Committee, and in the full Senate take this responsibility very seriously.

One of the ways that we exercise our constitutional responsibilities in this area, on behalf of the Senate and our colleagues who are not on the committee, is to closely examine the records of judicial nominees. We do that in part by holding hearings so that nominees can be questioned about their records, their judicial philosophy, their previous writings, their judicial opinions if they are currently or have been judges on other courts, and their views on legal issues. These hearings are not a mere formality, they are crucial to the role of the Judiciary Committee in carrying out the Senate's constitutionally mandated responsibilities.

This year, it appears that there is an effort underway to push through nominations in the shortest possible time. Prior to the President's Day recess, the committee held three nominations hearings in three weeks. By February 12, the committee had held hearings on five circuit court nominees. This is an extraordinary pace, particularly when you consider that the earliest that the committee had held hearings on five circuit court court nominees during President Clinton's term was April 29. In some years, that milestone wasn't passed until June, July, or even September, and in 1996, the committee never held a hearing on a 5th nominee to the circuit courts.

So this effort really gives the impression of a forced march. Our constitutional responsibilities are being subjugated to a schedule that seems to be aimed at forcing nominations through as quickly as possible, without regard to the Senate's prerogatives.

The Democrats on the committee have not tried to block all of the nominees. We voted on Miguel Estrada, and Jeffrey Sutton, and Jay Bybee in the ordinary course of business on the committee. But when it came to two other nominees, Justice Deborah Cook, a nominee for the Sixth Circuit and John Roberts, nominated to the D.C. Circuit, we tried to draw a line.

The reason we made that effort was that Justice Cook and Mr. Roberts were both considered in a single hearing on January 29th, along with Jeffrey Sutton, who was reported to the floor just prior to the recess. Actually, it is misleading to say they were considered in that hearing. They were all sitting at the witness table, but the vast majority of the questioning was directed to Mr. Sutton. There simply was not sufficient time for members of this committee to examine the other nominees.

A number of Senators asked repeatedly that further hearings be scheduled so that Senators could examine Justice Cook and Mr. Roberts. We even made the offer to have a single additional hearing for these two important nominees, even though we would prefer to examine a single controversial nominee at a time. We were rebuffed at every turn, even when it became abundantly clear that the single hearing would not suffice to let members of this committee examine the records of all of these nominees.

The single hearing that was held on January 29, 2003, on these three nominees was unprecedented. Never before has the committee held one hearing on three circuit court nominations over the objections of the minority. Indeed, it is highly unusual for the committee to hold a single hearing on even two controversial nominees, as a 1985 agreement among Senators DOLE, BYRD, THURMOND, and BIDEN demonstrates. That agreement was that only one controversial nomination would be considered at a time. It gave the minority some control over the pace of nominations, without of course giving it any kind of veto.

A number of Democrats on the committee raised the need for an additional hearing on Justice Cook and Mr. Roberts publicly during the hearing and privately during the breaks. We have repeated that request to the chairman of the committee on many occasions subsequently.

Early last week, when it become clear that the chairman would not schedule a second hearing so that Justice Cook and Mr. Roberts could receive proper consideration by the committee, we tried another approach. The nominees had said they are available to meet with us to answer any questions we have. So we sent a letter to the White House and requested that the two nominees make themselves available for a meeting to answer further

questions. In order to be able to proceed quickly in the committee following such a meeting, we suggested a joint meeting that Senators could attend at different times based on their individual schedules. We stated that we would have a transcript of the meeting prepared so that we could refer back to the nominees' answers, and that the meeting would be open to the public.

The response from the White House, which has repeatedly offered to have nominees meet with us privately was an immediate ''No.'' The immediate and unqualified refusal to our reasonable request seem to be part of the forced march. The Administration seems to be saying, ''We are to going to jam these nominees through, our way, regardless of how reasonable your request is.''

So that left us with only one option: To delay the vote on these two nominees until agreement could be reached on a further hearing, or some substitute for it. Some Senators on the Democratic side were simply not prepared to vote on Justice Cook or Mr. Roberts. We did not believe the committee has been given adequate opportunity to assess the qualifications and examine the record of Justice Cook and Mr. Roberts.

So when the chairman of the committee asked for a vote on Justice Cook, we objected. The proper course under our committee's longstanding Rule IV was for the chairman to hold a vote on a motion to end debate on the matter. The Rule provides that debate will be ended if that motion carries by a majority vote, including one member of the minority. In this case, our side was united in opposing ending the debate, so the motion would have failed. It is, in effect, as the chairman of the committee himself recognized in 1997 when the Rule was invoked in connection with the Bill Lann Lee nomination, a kind of filibuster rule in the committee. The vote to end debate is like a cloture vote, and it cannot succeed unless at least one member of the minority votes for it.

Now I have heard the argument, made by the chairman of the committee in a letter to the Democratic leader, that this rule was designed to allow a majority of the committee to force a so-called ''rogue chairman'' to hold a vote on a matter when he doesn't want to, but not to limit the chairman's ability to call for a vote over the objections of the minority. That is clearly an erroneous interpretation. It conflicts with text of the rule, the practice of the committee for 24 years under five separate chairmen, including the current chairman, and with the history of the rule itself.

The rule was adopted in 1979 when Senator KENNEDY chaired the committee. The committee at that time had 10 Democrats and 7 Republicans. Until that time there was no way to end debate in the committee. Recent years had seen controversial matters such as the Equal Rights Amendment stalled in committee. The Civil Rights era had seen the committee headed by a segregationist chairman block civil rights legislation by allowing it to be filibustered and never voted on. Chairman KENNEDY sought a new committee rule to allow him to bring a matter to a vote. His original proposal was simply to let a majority vote of the committee end debate. On January 24, 1979, he proposed such a committee rule.

Republicans on the committee, including Senator Thurmond who was the ranking member, and Senators SIMPSON, DOLE, COCHRAN, and HATCH, spoke up to protest that the minority should retain the right to debate a matter for as long as it felt it needed to. The next week, the committee reached agreement and adopted Rule IV, which has been in effect ever since. The compromise ended the ability of one or a few Senators to tie up the committee indefinitely. But it gave the majority the power to end debate if it could convince one member of the minority to agree. That was the compromise reached, and that is the rule we have had for over two decades.

The chairman's argument that the rule places no limit on his ability to end debate is clearly answered by this history. It is clearly wrong. The committee rule was violated when Justice Cook and Mr. Roberts were reported over the objection of some members without a ''cloture vote'' in the committee. There is simply no question about this.

It is very disappointing to have to discuss and debate committee rules on the floor of this body. This might seem like a petty matter. But it isn't. Honoring the rules of the Senate and the rules of the committees gives credibility and legitimacy to the work we do here. Rules are the hallmark of a democracy. In many ways our rules are analogous to the rule of law in our society. We have to respect those rules or we have nothing left.

In situations like these, I often think of the words of the great philosopher Sir Thomas More as portrayed in the play ''A Man for All Seasons.'' More questions a man named Roper whether he would level the forest of English laws to punish the Devil. ''What would you do?'' More asks, ''Cut a great road through the law to get after the Devil?'' Roper affirms, ''I'd cut down every law in England to do that.'' To which More replies:

> And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast . . . and if you cut them down . . . d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.

It is clear from the history of Rule IV that it was insisted on by Republican Senators then in the minority to preserve their rights in committee. They should not cut down that forest just to have their way now that they are in the majority. We cannot permit that kind of results-oriented approach to the rules of the committee or of this body. The rules of this body, like the laws of this country, protect all of us. We must stand up to efforts to ignore them. What happened in the committee last week did not reflect well on this body. I sincerely hope that the chairman will reconsider his rulings and return some comity to our proceedings.

Let me just finally say that I voted Present on both Justice Cook and Mr. Roberts. I have not made a final decision on their nominations. I could very well support one or both of them here on the floor. But I think the committee must hold a proper hearing on them, giving all Senators a better opportunity to be well informed on these nominees before exercising their constitutional responsibilities.

THE FARM BILL

Mr. HARKIN. Madam President, I rise today to discuss an issue that has arisen out of a technical problem in the farm bill Congress passed last year.

Section 10806(b) of the Farm Security and Rural Investment Act of 2002 amended the Federal Food, Drug and Cosmetic Act by placing limitations on the use of the term ''ginseng'' as the common or usual name for plants classified within the genus Panax. The purpose of this provision was to address confusion that had arisen from products derived from different plants being labeled as ''Siberian ginseng'', and the like.

However, I must note that the use of the term ''ginseng'' for plants classified in a genus other than Panax was not illegal under Federal labeling laws in place prior to the passage of the Farm Security and Rural Investment Act of 2002. In these types of situations where a labeling change is proposed, the Food and Drug Administration recognizes that, in order to assure an orderly and economical industry adjustment to new labeling requirements, a sufficient lead time is necessary to permit planning for the use of existing label inventories and the development of new labeling materials.

Unfortunately, the ginseng provision Congress included in the farm bill lacked a specific effective date that would have allowed FDA's typical transition period to occur. As one of the lead authors of the farm bill, and as chair of the Senate Agriculture Committee at the time, I want to be clear this was simply an oversight on the part of the Senate and House in writing that portion of the farm bill that needs to be corrected as soon as possible.

I proposed to correct this omission in the Omnibus Appropriations bill for FY 2003, PL 108–7, and supply an effective date of May 13, 2003 for Section 10806(b) Ginseng Labeling of the Farm Security and Rural Investment Act of 2002. Unfortunately, in the rush to complete work on that bill, the provision was left out even though no one had any objections to it.

Because it is important to address this as soon as possible, I want my colleagues to know that I plan to offer my amendment to supply an effective date for the ginseng provision again, either on the supplemental legislation we are likely to receive soon or other legislation moving on the floor of the Senate. It is my hope we can more quickly to correct this oversight.

THE HEINZ AWARDS 2003

Mr. SPECTER. Madam President, after the sudden and untimely death of our colleague—and my friend—Senator John Heinz, in 1991, his wife, Teresa Heinz, set about devising a suitable and characteristic memorial to his memory. As she has said, such a task is especially difficult when the goal is to honor someone as complex and multifaceted as Senator Heinz was. She realized that no static monument or self-serving exercise in sentimentality would do, and that the only tribute befitting Senator Heinz would be one that celebrated his spirit by honoring those who live and work in the same ways he did.

Those of us who had the privilege of knowing Senator Heinz remember, with respect and affection, his tremendous energy and intellectual curiosity; his commitment to improving the lives of people; and his impatience with procedural roadblocks when they stood in the way of necessary progress. For Senator Heinz, excellence was not enough; excellence was taken as a given. What made the difference was the practical—and, yes, pragmatic—application of excellence to the goal of making America a better nation and the world a better place. Although John Heinz thought and worked on a grand scale, he understood that progress is more often made in small increments: one policy, one program, even one person, at a time. We also remember the contagious enthusiasm and palpable joy with which he pursued his goals and lived his life.

Teresa Heinz created the Heinz Awards to celebrate and carry on these qualities and characteristics—five awards in each of five categories in which John was especially interested and active during his legislative and public career: Arts and Humanities; the Environment; the Human Condition; Public Policy; and Technology and the Economy. In each of these areas, the Heinz Awards recognize outstanding achievements. In fact, the annual Heinz Awards are among the largest individual achievement prizes in the world.

The six men and women who are being honored with this year's Heinz Awards—the ninth annual Awards—have just been named and were honored last night. They are a distinguished and accomplished group of men and women whose lives and work have truly made a difference.

This year the Arts and Humanities Heinz Award is being presented to Dr. Bernice Johnson Reagon. Dr. Reagon's deep commitment to civil rights and song has led her down the path of activism, the arts, and academics. Dr. Reagon's experiences in Albany, Georgia during times of segregation led to her founding the women's vocal ensemble, Sweet Honey in the Rock, which is celebrating 30 years of struggle, action, and triumph. As a curator at the Smithsonian Institution, Dr. Reagon has worked tirelessly to ensure that the tradition and story of African-Americans in the 18th, 19th, and 20th centuries are not forgotten. In addition, Dr. Reagon spearheaded the museum's efforts to preserve the oral history of the Civil Rights Movement culture and African-American sacred music and worship traditions.

This year the Heinz Award in the Environment is being shared by Dr. Mario, J. Molina and Dr. John D. Spengler. Dr. Molina, an expert on ozone depletion at the Massachusetts Institute of Technology, shared the 1995 Nobel Prize in Chemistry for his work on the effects of chlorofluorocarbons (CFCs) and was one of the most vocal scientists that led the charge to have CFCs banned in 1979. He is currently one of the most influential and respected voices in environmental policy.

Dr. Spengler of Harvard University's School of Public Health is being commended for his efforts in understanding the consequences of indoor and outdoor air pollution on public health. His findings that indoor air quality had a tremendous impact on overall health guided the focus of air quality standards toward a holistic approach, as opposed to a singular focus on outdoor air pollution. As the vice chairman of a National Research Committee that ultimately recommended the 1986 airliner smoking ban, Dr. Spengler solidified his reputation as an expert in his field as well as a dedicated advocate for public health. Dr. Spengler currently serves as an adviser to the Environmental Protection Agency and the World Health Organization.

Dr. Paul Farmer receives the Heinz Award for the Human Condition. As a physician and medical anthropologist, Dr. Farmer, of Harvard Medical School, has unfailingly committed himself to the study of HIV and tuberculosis treatment around the world. Dr. Farmer has spent the better part of his career opening the world's eyes to the abject inequalities in public health as well as developing practical programs that deliver life-saving services. His efforts in public health have led the World Health Organization to reconsider its position on treating HIV/AIDS and tuberculosis.

The Heinz Award for Public Policy is being awarded to Ms. Geraldine Jensen of Toledo, Ohio. Ms. Jensen founded the Association for Children for Enforcement of Support (ACES), the largest child support enforcement organization in the United States with over 50,000 members nationwide. After a divorce that left her and her children with very few opportunities, Ms. Jensen rallied single parents experiencing the same hardships to stand up for themselves and their children and demand justice. A committed advocate for children and families, Ms. Jensen's work has resulted in the passage of three federal laws on child support and safeguards to ensure that fewer children will become victims of poverty.

Dr. Paul MacCready receives the Heinz Award for Technology, the Economy and Employment. Named the ''Engineer of the Century'' in 1980 by the American Society of Mechanical Engineers, Dr. MacCready invented and built the first flying machine powered solely by a human, the Gossamer Condor. Dr. MacCready, however, did not stop there. He also helped to create non-fossil fuel automobiles, the first solar powered car, and the first viable mass-market electric car, among his many other inventions. A generation later, Dr. MacCready's ideas on the relationship between advancing technology and preserving the earth's resources continue to impact the field of engineering and will not doubt continue to do so for years to come.

I know that every Member of this body joins me in saluting Teresa Heinz for creating such an apt and appropriate way of honoring the memory of our late colleague; and also in congratulating these distinguished Americans, recipients of the ninth annual Heinz Awards, for the way their lives and contributions have—and continue to—carry on the spirit and the work of Senator John Heinz.

ADDITIONAL STATEMENTS

BLACK HISTORY MONTH 2003

● Mr. DURBIN. Madam President, I rise today in honor and recognition of Black History Month. Inspired by an Illinois native, Dr. Carter G. Woodson, the month of February allows Americans an opportunity to honor and celebrate the achievements African Americans have made to our country.

Earning his bachelors and master's degrees from the University of Chicago, Dr. Woodson feared that the history of African Americans was quickly fading into obscurity. Realizing that past contributions by African Americans needed to be documented and taught, Dr. Woodson devoted his time popularizing Black history amongst the masses. He concluded, ''if a race had no recorded history, its achievements would be forgotten and, in time, claimed by other groups.'' In 1915, Dr. Woodson founded the Association for the Study of Afro-American Life and History, ASNLH, and in 1916 they released the first publication of the Journal of Negro History, a publication for which Dr. Woodson served as editor and director until his death in 1950.

In 1926, Dr. Woodson established Negro History Week, which expanded to Black History Month in 1976. Thanks to the efforts and achievements of Dr.

Woodson and others, each year our Nation celebrates the history of African Americans and the contributions they have made for the entire month of February.

I am proud to say my home State of Illinois is rich in African-American History and I would like to share some of the great accomplishments African-American Illinoisans have made to our country. Beyond the well known Illinoisans like Miles Davis and James Cleveland who transcended racial lines in the music industry, there exist lesser-known Illinoisans who have made tremendous impacts on our society.

Take for example Dr. Mae C. Jemison, the first African-American woman in space. Raised in Chicago, Dr. Jemison graduated from Morgan Park High School in 1973. At age 16, she entered Stanford University on scholarship where she graduated with a Bachelor of Science degree in chemical engineering, and fulfilled the requirements for an A.B. in African and Afro-American Studies. On September 12, 1992, Dr. Jemison flew into space aboard the space shuttle Endeavor, becoming the first woman of color to venture into space. Along with this tremendous accomplishment, Dr. Jemison has focused on improving the status, quality, and image of the scientist, specifically encouraging women and minorities to pursue careers in science. For example, she founded The Jemison Group, Inc., to research, develop, and implement advanced technologies suited to the social, political, cultural, and economic context of the individual, especially for the developing world.

Along with Dr. Jemison, there are countless others in Illinois that have had a tremendous impact on the lives of many Americans. One such example is those affiliated with the Illinois Theater Center in Chicago. In honor of Black History Month each February, the Illinois Theater Center produces an African-American play. This year is no different, with the Theater presenting a play titled ''Master Harold and the Boys''. The drama is the work of South Africa's leading playwright, and was recently chosen as ''One of the Most Significant Plays of the 20th Century'' by the National Royal Theater in London. Set in Port Elizabeth, South Africa in 1950, it depicts the coming-of-age of a white teenager and his relationship with the two black men who work as waiters at his parents' restaurant.

Dr. Jemison, and those of the Illinois Theater Center continue to carry on Dr. Woodson's goal of popularizing Black history. Black History Month allows others, like myself, to commend these remarkable individuals on their tireless efforts and accomplishments. However, while we honor the great strides made by African Americans in overcoming obstacles and color barriers, we must also look ahead and recognize the great obstacles that still hinder African Americans today.

One such obstacle is the issue of HIV/AIDS. Although African Americans make up about 12 percent of the U.S. population, they accounted for half of the new HIV cases reported in the United States in 2001. African Americans have accounted for nearly 315,000 of the more than 816,000 AIDS cases reported since the beginning of the epidemic. By the end of December 2001, more than 168,000 African Americans had died from AIDS. These astonishing statistics remind us that the issue of HIV/AIDS infiltrates all borders and is not exclusive to developing nations.

Earlier this month the Center for Disease Control and Prevention noted that the 25 States that track HIV cases reported an increase in new diagnoses. As the number of HIV cases increase, prevention programs must continue to develop in cities across the United States. One particular prevention program, the AIDS Foundation of Chicago, works to reduce the risk of HIV among African Americans living in shelters and other transitional living facilities throughout the greater Chicago area. The program trains shelter staff and volunteers to be HIV and STD prevention peer educators and provides personalized HIV counseling, testing and referral services to those at risk for HIV. Programs like these will help fight this terrible epidemic.

To fulfill the dreams of visionaries like Dr. Woodson and Dr. Jemison, progress must be made in breaking down barriers that continue to hinder African Americans. All of these great Illinoisans, and the countless others, struggled against violence and bigotry, but each managed to demonstrate through their distinctive talents that racism and bigotry are un-American. I urge all Americans to learn more about the history of African Americans in this country, and acknowledge the contributions of African Americans to our great Nation.

SALUTE TO BLACKSMITH PHILIP SIMMONS

• Mr. HOLLINGS. Madam President, I am inserting an article from a recent Post and Courier about one of my home State's legendary blacksmiths, Philip Simmons. He is a 90-year-old retiree, who was told 70 years ago that the car would kill the market for blacksmiths. Yet, to this day, he still passes his knowledge of the art on to young people, and I think we can all be inspired by his enthusiasm for an old American art that he won't let be lost.

The citizens of my state have the opportunity to see and enjoy Mr. Simmons' work all over Charleston. In 1975, he forged a piece for the Smithsonian that all Americans can take delight in. As he continues to stay active and show his work, I hope my colleagues in the Senate join this admirer of a great American in wishing him health and happiness in the years to come.

I ask to print the article in the RECORD.

The article follows:

[From the Post and Courier, Feb. 19, 2003]

INSPIRES OTHERS

(By Penny Parker)

Master blacksmith Philip Simmons hasn't slowed down much since turning 90 last June. He still takes any chance he gets to pass on his enthusiasm for ornamental iron working to future generations.

As special guest of the Charleston Trident Home Builders Association, he will be doing just that at this year's Lowcountry Home and Garden Show at the Charleston Area Convention Center. Simmons will be at the show from 10 a.m. to noon on Saturday and from 2 to 4 p.m. on Sunday.

Simmons and students from the School of the Building Arts (SoBA) will be on hand at the Home and Garden Show to offer insight into the building arts of the past, and the importance of passing on this knowledge to future generations. Simmons will answer questions and sign copies of his books and posters, which will be on sale during the show. Plant hangers with his named inscribed on them and jewelry made from his designs will be available as well. New items this year include Christmas ornaments, wrapping paper and a 2003 calendar also features ''Good Friday'' by Jonathan Green on the cover.

Proceeds from the sales of these items go towards the Philip Simmons Foundation and its effort to build the Philip Simmons Blacksmith Museum at the Camden Towers Cultural Arts Center, which is set to be completed in 2004.

Simmons was born on Daniel Island on June 9, 1912, and moved to the Charleston peninsula when he was 8 years old. He became an apprentice for blacksmith Peter Simmons (no relation) at the age of 13. he started out shoeing horses and repairing and making wagon wheels in Peter Simmons' shop on Calhoun Street. Once cars became the more popular mode of transportation, he switched to making trailers, but big businesses such as Sears soon put an end to that venture.

In 1938, he switched to ornamental iron work when a client commissioned him to make a gate from a set of plans. The rest is history.

Over the years, he as fashioned more than 500 decorative pieces of ornamental wrought iron gates, fences, balconies and window grills. His work can be seen throughout Charleston, in Columbia and even at the Smithsonian Institute in Washington, D.C.

In 1982, the National Endowment for the Arts awarded him its National Heritage Fellowship, the highest honor the United States can bestow on a traditional artist. This was followed by a similar award from the South Carolina state legislature for ''life-time achievement'' and commissions for public sculptures by the S.C. State Museum and the City of Charleston. Simmons was inducted into the S.C. Hall of Fame in Myrtle Beach on Jan. 31, 1994.

Pieces of Simmons' work have been acquired by the National Museum of American History at the Smithsonian Institute, the Museum of International Folk Art in Santa Fe, N.M., the Richland County Public Library and the Atlanta History Center. Two gardens in Charleston have been dedicated in Simmons' name, one at his church, St. John's Reformed Episcopal Church at 91 Anson St., and a children's garden at 701 East Bay St., near his house and workshop.

While the awards and accolades mean a great deal to Simmons, one of his big thrills now comes from teaching his craft and passing on the artistry of ornamental iron work to a new generation of craftsmen.

''I don't want it (ornamental wrought iron work) to become a lost art,'' he says. ''I can't work anymore, but I can teach. A lot of

young people see the need to keep these old crafts going, and they want to learn.''

Simmons teaches workshops at SoBA and has students come to his shop for hands-on lessons also. He gladly welcomes visitors to his workshop on Charleston's East Side because he sees it as a way to pass on the old way of working with wrought iron.

''I bring people to look at the shop all the time,'' he says. ''It reminds them of the past. You had to use these hands. There were no machines.

''The machines can cut the wood and the iron, but it's not the same. It's not the art. You can create so many things with that forge. You can really knock yourself out.''

Of all the pieces Simmons has crafted, he says his favorite piece is the one he made at the Smithsonian Institute in 1975 and which has been on display there ever since. ''The one at the Columbia (State) Museum and the one at the (Charleston International) Airport are the prettiest. The Smithsonian one with the fish, the moon and the stars might not be the prettiest, but it shows the country what is going on in South Carolina. So many people have seen it and can learn my craft. That's the piece I love the best, not for looks, but for its purpose in serving this country.''

Simmons adds that although many people tried to tell him that the car would kill the market for blacksmiths, he never thought of leaving the field. ''In the '30s and '40s, people told me that blacksmith was a dying art. I would shake my head and say, 'OK.' That didn't stop me. I didn't close up shop and go work at the Navy Yard or something. I kept on going, and made a great living at it. Not rich, but live well and take care of my family. Now I want to get people excited about it and pass it on.

''Craftsmen enjoy making things people have never seen. It's a joy. That's what keeps me going.

''I'd be in there beating on that forge right now if my health were good. But I do enjoy passing it on.''●

THE BURMESE JUNTA'S PERSISTENT USE OF CHILD SOLDIERS

● Mr. MCCONNELL. Madam President, I recently read an article that appeared in the Washington Post on February 10, 2003 by Ellen Nakashima that details particularly repulsive human rights abuses committed by the Burmese military junta, whose brutal totalitarian misrule has shattered the lives of its citizens and ruined Burma's economy. I am grateful for Ms. Nakashima's excellent reporting, and am pleased to draw attention to this important issue. I will ask that Ms. Nakashima's article, entitled ''Burma's Child Soldiers Tell of Army Atrocities,'' be printed in the RECORD following my remarks.

Reports of widespread use of child soldiers, forced labor, and human rights abuse come as no surprise to anyone with even casual knowledge of recent Burmese history. Tragically, these recent reports are not ''news,'' but rather business as usual in one of the world's most repressive countries.

While the corrupt military junta has recently been conducting a propagandistic offensive to convince naive Western diplomats that Burma can be a responsible member of the international community, the continual flow of evidence regarding Burma's gross abuses of human rights illustrates how hollow recent Burmese ''reform'' has been. Anyone duped into believing that the junta's decision to loosen the shackles that bind Aung San Suu Kyi, the democratically elected leader of Burma who has spent nearly a decade under house arrest, represents a liberalization of the junta should think again. Proof that the Burmese junta continues its repression of democracy came yesterday when the Defense Ministry announced that it had detained seven members of Aung San Suu Kyi's National League for Democracy Party, NLDP, members. Their treasonous crime appears to be distributing anti-government leaflets.

The Burmese junta maintains power through its gratuitous use of military force against ethnic minorities and political dissidents. Now, the evidence is overwhelming that the junta exploits children as young as 11 years old in pursuit of greater coercive military power. Human Rights Watch reports that Burma's army of 350,000 includes nearly 70,000 boys under the age of 18.

If these children are fortunate enough to survive the physical and emotional abuse heaped on them by their military superiors during their ''training,'' they are then forced into combat, often against domestic Karenni and Shan minorities. As part of the ethnic cleansing and intimidation campaigns the Burmese junta has conducted against these ethnic minorities for decades, these children soldiers are often encouraged to torture, rape, and kill innocent villagers. In one instance, Burmese military commanders ordered some of these child soldiers to force Karenni villagers to clear a minefield by walking through it. The children were subsequently ordered to shoot villagers who refused to walk through the minefield.

Recently, the Burmese junta has sought to improve its standing in the international community by touting its supposedly more intense efforts to curb the production and trafficking of heroin. Mr. President, this claim is laughable. American State Department officials should not be deluded into believing that Burma has become a partner in the war against drugs. Burmese child defectors from the army who now live in refugee camps in Thailand have corroborated reports that the Burmese military has fueled its soldiers by making them take amphetamines, washed down with whiskey, before going into combat. Countries that force drugged children into deadly combat should not be considered allies by the United States in any war.

In response to Human Rights Watch's report, a Burmese military spokesman denied that Burma ''recruits'' underage soldiers and incredulously asserted that Burma's military is an all-volunteer army. Such brazen lies should convince no one that the Burmese government has changed its repressive ways.

If Than Swe, as head of the Burmese government, is committed to upholding international standards of human rights, it can begin by enacting meaningful and verifiable economic, political, and judicial reforms. It should release the seven NLDP members it has unjustly arrested and all other political prisoners, and it should allow Aung San Suu Kyi to meet and communicate freely with Burmese citizens throughout the country, as well as with international representatives. Until the Burmese junta agrees to hold free and fair elections to allow the Burmese people the opportunity to choose their own leaders, it must be aware that American sanctions will continue.

I ask that the article to which I referred be printed in the RECORD.

The article follows:

[From the Washington Post, Feb. 10, 2003]

BURMA'S CHILD SOLDIERS TELL OF ARMY ATROCITIES

(By Ellen Nakashima)

He was taught how to hold an assault rifle and aim it at an enemy. He was taught how to pull a trigger, aim at the next enemy and pull the trigger again. He learned all this, he says, by the time he was 12, when he was officially declared a soldier of Burma and sent to the front lines of a long-running civil war.

Now 14, the taciturn boy Kyaw Zay Ya lives in a rebel-held village in Burma near the Thai border, one of the few places in the country willing to protect him from service in what human rights monitors call the largest child army in the world.

According to New York-based Human Rights Watch, Burman's army of 350,000 includes as many as 70,000 youths under 18. A study the group issued last October found that rebel groups fighting the army also use child soldiers, though in far smaller numbers.

The numbers would make the military-ruled Burma, also known as Myanmar, the worst violator of international laws against using children in armed conflicts, Human Rights Watch contends.

The Burmese government has denied that its army takes in recruits under 18, and says that its force is all volunteer. But people interviewed in safe houses and camps along the border disputed those contentions.

In a two-hour talk here, Kyaw said he was press-ganged into the army at age 11, took part in combat repeatedly and felt ''afraid and very far from home.''

Another young man, Naing Win, said he was 16 when he was ordered into a nasty firefight. To fuel the soldiers, he said, the commander made them take amphetamines, washed down with whiskey. The troops, Naing recalled, ''got very happy.''

In the encounter, each soldier was ordered to lob five grenades at the enemy. Naing, whose forehead bears a shrapnel scar, said he was sufficiently high on the drugs that at one point he was throwing stones. With one grenade, he forgot to remove the pin that allows it to explode. then he was ordered to run forward exposed to enemy fire, retrieve the grenade, take out the pin and throw it again. The battle killed his best friend, 15.

Another time, after his unit had won a battle against ethnic Karenni rebels, his commander wanted the area cleared of mines. But 40 Karenni villagers were made to walk through the mined zone, he said. In the ensuing explosions, some died and some lost their legs. Those who survived were lined up. Naing said he and several other soldiers were ordered to shoot them. They did.

''I'm very sorry,'' he said.

For much of Burma's history since it gained independence in 1948, the national army has been fighting guerrilla armies fielded by ethnic groups that want control of their own affairs and regions. Currently, army operations consist largely of low-intensity conflicts against a handful of opposition groups, notably the Shan State Army, the Karen National Liberation Army and the Karenni Army.

The army has a major advantage in numbers over these groups, none of which has more than 15,000 troops, according to Karen and Karenni officials and Human Rights Watch, but they say the army still employs underage soldiers.

''Children are picked up off the street when they are 11 years old,'' said Jo Becker, child advocacy director for Human Rights Watch. ''Many have no chance to contact their families and see their parents again. Everyone we had talked to had been beaten during the training. Most were desperately unhappy.''

The Burmese government denies the charges. ''I am totally flabbergasted at the assertions in the Human Rights Watch report,'' said Col. Hla Min, deputy head of the Defense Ministry's International Affairs Department in the capital, Rangoon. ''The Myanmar Defense Forces does not recruit underage and, in fact, MDF is a voluntary army. Today, after 98 percent of all the insurgents have made peace with the government, there is not much need for recruitment as accused by certain quarters.''

In a faxed reply to a query, he stated that the Burmese troops are now engaged in work similar to that of the U.S. Civilian Conservation Corps during the Great Depression.

U Kyaw Tint Swe, Burma's ambassador to the United Nations, said in a statement to the U.N. Security Council on Jan. 14 that ''there is no credible evidence of the use and recruitment of children by the Myanmar armed forces.''

U.S. policy is that people can enlist in the military at age 17, but must be at least 18 to serve on front lines.

In an interview, a 19-year-old named Aung, who asked that his full name not be used, said he was taken into the army in 1998 at age 14 after seven years in an army-run prep camp, named Ye Nyunt. There he and others learned to march in straight rows, clean guns and recognize land mines. Aung was 9 when he first picked up a gun, a standard army-issue G–3. The gun was taller than he was, he recalled.

Aung though that after he finished his studies, he would become an army captain. But one June day in 1998, when he was 14, a general showed up at the school. All boys older than 13 who had not finished the 10th grade were pulled aside. He and his schoolmates thought they were just being sent to another class. Instead, they were trucked to a holding center in Mandalay. ''I got to the army by force,'' he said, ''not voluntarily.''

Aung said he first saw battle at the age of 15, and he was sick for three days afterward. But he grew used to it: In the following two years, he took part in seven major firefights and countless minor skirmishes, he said.

The worse battle lasted from early morning into the evening, in the village of Loi Lin Lay in 1999. The fighting began at the back of the village and by afternoon had moved to the front, where he and his friend, another 15-year-old, were deployed. By nightfall, most of his Burmese counterparts were dead.

''During the fighting, you don't have time to think,'' he says. ''Only shoot.''

He said he felt powerless to resist. In the army, ''if a bad person gives an order, you have to follow it. If he says burn the village, you have to burn it. If he says kill a person, you have to do it.''

Naing Win, the boy soldier who recounted use of amphetamines, said in an interview that he was picked up at a train station near Mandalay when he was 15. Authorities found he had no identification card and gave him a choice: Join the army or go to prison. He was forced into a truck with 40 other people, 16 of whom were boys. They were taken to an army base, then to a holding camp for recruits.

If a boy refused to east his food, was late or missed a task, the other soldiers would often be forced to beat the victim with bamboo strips or a whip, Naing said. There were other forms of punishment, the former soldiers said, such as jumping in the sand like frogs for 10 minutes, or lying flat on the ground and staring at the sun.

One boy was stripped naked, his hands and legs tied, Naing recalled. After 20 or 30 blows, his skin was bloody. An officer rubbed salt into the wounds on his back. The boy screamed in pain. Hours later, he was dead.

But not all officers were harsh, said Kyaw, who recounted being plucked for military service from a bus stop near Rangoon at age 11. One officer let the boys watch videos, including James Bond movies. Others would arrange surreptitious meetings between a youngster and his parents.

In the field, they had duties that included rounding up villagers in rebel areas to serve as porters, the former soldiers said. Those who balked or could not keep up were beaten or killed. Naing said he also witnessed Karenni villagers being raped. A general told the soldiers that raping women serves ''to give the soldiers energy.''

''Some of my friends said, 'It's okay. They're not Burmese. They're Karenni.'' Once, he said, he saw a teenage girl being raped repeatedly in an open field in the evening. First came the battalion leader, then a bodyguard, then ordinary soldiers. She was screaming and crying. She was left to die, he said.

All three of the former soldiers said they eventually deserted.

Naing fled in 1995, after six years in the army. He married a Karenni woman and joined the Burma Patriotic Army, a group of 30 fellow deserters whose aim is to oppose the central government in Rangoon. He said he has pretty much abandoned hope of seeing his family in Mandalay province again, unless there is a change in government. He still dreams about his friend who was killed.

Aung escaped in May 2001. Today, he lives in a Thai town near the border and works odd jobs. He is waiting for the political situation to change, so that he can return home to Rangoon province. The only way he expects that to be possible is if ''people in the outside world put a lot of pressure on the government.''

And last September, after three years in uniform, Kyaw was bathing alone in a stream near a waterfall. No one was watching. He bolted. After walking for four hours, he reached a Karen village, where soldiers tied his hands an punched him, thinking he might be a spy. After he convinced a Karen officer that he was a true deserter, he was given refuge in a border village.

He does not dare to go home. ''They will put me in prison,'' he said. He has no desire to resume studying. His only desire is to be a kickboxer one day, like his favorite Burmese boxers Shwe da Win and Wan Chai. He says he does not think much about the army. He has no nightmares. ''I don't dream,'' he said.●

COMMENDING LINDA MORGAN

● Mr. HOLLINGS. Madam President, I want to pay tribute to an outstanding public servant, Linda Morgan, as she prepares to leave the Surface Transportation Board next month. She has been a Commissioner of the Board, and its predecessor, the Interstate Commerce Commission, since 1994, much of that time as Chairman. As such, she demonstrated real leadership, presiding when there were difficult years for the railroad industry as many companies merged.

I know Linda's excellent work firsthand. She served for 15 years as a professional staff member with the Senate Committee on Commerce, Science, and Transportation, and I was proud to name her the first female General Counsel to the Committee. It is fair to say that Linda Morgan is responsible for much of the legislation that established the framework for today's surface transportation system.

Last month, the Washington Post interviewed Linda, seeking out her views on the railroad industry. I think it would do all members of this body well to read what this dedicated model of public service had to say.

I ask to print the following article in the RECORD.

The article follows:

[From the Washington Post, Feb. 27, 2003]

RAILROAD REGULATOR LINDA MORGAN RESIGNS

(By Don Phillips)

Linda J. Morgan, the federal official who saw the railroad industry through a decade of turbulent mergers, said she will resign from the Surface Transportation Board on April 8, almost nine months before her term expires.

Morgan, a Democrat who had a cordial relationship with Bush administration officials, had been asked to remain as chairman until the administration could name a replacement, a process that took a year. Roger P. Nober, a Transportation Department official, was named chairman of the three-person board in December. Morgan's departure as a member had been expected. She said she will not decide on a future career until after she leaves.

Chairman of that board and its predecessor, the Interstate Commerce Commission, since March 23, 1995, Morgan presided over the Union Pacific-Southern Pacific merger in 1996 that resulted in a meltdown in rail service nationwide, and the 1999 division of Conrail between Norfolk Southern and CSX Transportation, which created serious service problems that were not solved for months. Those systems have recovered from their problems and service appears to be improving.

The Surface Transportation Board, in addition to approving rail mergers, also has some powers in regulating the commercial end of the railroad industry.

Morgan said she believes that the railroad industry has emerged from the merger period better, because the companies learned to pay closer attention to their customers and to day-by-day operations.

''This period without mergers has been good for the industry,'' she said. ''For a time, mergers were the answer to everything.''

But Morgan said she fears for the future of freight rail because the railroads, shippers, Congress and states are polarized over whether government should impose conditions to guarantee greater competition, which would cause freight rates to fall. Such ''open access'' proposals could hurt customers more than they help, she said.

Everyone is trying to gain narrow advantage rather than engaging in a debate on what role railroads should play in the future, she said.

Morgan said that freight railroads, although more successful than ever, do not yet earn enough to pay for the cost of maintaining and expanding their infrastructure. But she said the railroads may have a difficult time investing in infrastructure they would need to move more freight in the future, if some customers and Congress continue to push for even lower rates.

''Railroads can't be all things to all people,'' she said. ''They can't be giving people lower rates but then sustaining the network they have in place today and opening up their line to commuters for some sort of low cost. You can't do it all. Somehow the finances have to make sense.''

Unless there is a comprehensive and sensible debate, Morgan said, Congress and shippers may some day find that their only two choices are to let the industry shrink or to let the federal government take over the railroads or railroad infrastructure at a high cost.

''The customers want lower rates,'' she said. ''But do they also understand that over time, over some period of time, if all these rates keep coming down, then there won't be the revenue coming into the system to sustain the network that exists today in the private sector? Then will that mean the customers will lose service that they don't want to lose, and will they be prepared for that?

''Will members of Congress understand that if we go in certain directions from a policy position, and that ends up with a situation where there are not enough revenues coming into the system to sustain this rail network in the private sector, will they then be prepared to do what's necessary to do the next thing? . . . I want to make sure that everybody understands that is the challenge for the industry.''●

PROFESSOR ANTHONY JONES

● Mr. DURBIN. Madam President, I rise today to recognize Professor Anthony Jones, president of the School of the Art Institute of Chicago. Professor Jones has been awarded the honor of Commander of the British Empire by Her Majesty Queen Elizabeth for services in the promotion of British art in the United States. King George V created the Commander of the British Empire honor in 1917 to reward services to the World War effort by civilians at home and service personnel in support positions. The orders are now awarded in both military and civil divisions for public service or other distinctions.

Originally from Wales, Tony Jones is an internationally-known arts administrator, broadcaster, writer and historian of art design. Professor Jones studied at the University of London and the Newport College of Art, and came to the United States as a Fulbright Scholar. He earned his graduate degree from Tulane University in New Orleans, LA.

Before coming to Chicago, Tony Jones had been Director of the Glasgow School of Art. He created the ''Welsh Chapels'' exhibition of the National Museum of Wales, and is the author of ''Chapel Architecture in the Merthyr Valley'' and ''Welsh Chapels.'' In 1999, his research on the architectural parallels of Glasgow and Chicago was examined in the BBC documentary ''A Tale of Two Cities: Glasgow and Chicago.'' Professor Jones is a recognized authority on the development of art, design and architecture in the Modern Age, especially the work of the architect and designer Charles Rennie Mackintosh and the Celtic Revival movement designer Archibald Knox.

Professor Jones's accomplishments have earned him international recognition. In addition to his positions as Senior Fellow of the Royal College of Arts in London, where he also served as Director, and as Fellow of the Royal Society of Arts, he was appointed Honorary Director of Japan's Osaka University of the Arts in 2001 and was conferred the Austrian Cross of Honor for Science and the Arts in 2002. Here in the United States, Professor Jones was elected Honorary Member of the American Institute of Architects and has won the National Council of Arts Administrators Award for Distinguished Service in the Arts. He currently serves as the president of the School of the Art Institute of Chicago and as president of the Alliance of Independent Colleges of Art and Design.

Professor Jones was granted the honor of Commander of the British Empire in recognition of his long years of distinguished service to the arts and culture, international education, and the promotion of British arts in the United States. The honor will be awarded by Her Majesty Queen Elizabeth at an investiture ceremony at Buckingham Palace later in the Spring.

It is my privilege to congratulate Professor Jones on the occasion of this prestigious award and to acknowledge his extensive contributions to the arts. He is an asset to the arts and education communities in Illinois and across the globe.●

RETIREMENT OF LTC TED PUSEY

● Mr. REED. Madam President, I wish to recognize and pay tribute to LTC Edward B. ''Ted'' Pusey, Liaison Officer in the Army's Office of the Chief of Legislative Liaison, who retired February 28. Colonel Pusey's career spans 27 years of Army service during which he has distinguished himself as a soldier, leader and friend of the United States Senate.

Born in Washington, DC in 1953, Lieutenant Colonel Pusey graduated from Wofford College in 1976 and was commissioned as a lieutenant in the Armor Branch of the US Army. During his career, he commanded at many levels and served in staff positions at the highest levels of the Army, always ably leading and training America's soldiers at home and overseas. His duty locations over the years included Fort Riley, KS; Mainz, Germany; Fort Leavenworth, KS, as the Executive officer for the Army's School of Advanced Military Studies; Fort Stewart, GA, with the 24th Mechanized Division as both a Battalion and Brigade Operations Officer, as a Battalion Executive Officer and as a Brigade Adjutant during Operations Desert Shield and Desert Storm ; and, finally, in the Pentagon and Senate in the Office of Legislative Liaison. Lieutenant Colonel Pusey also served as a Tactics instructor at the Royal Armoured Corps Centre in Bovington Camp, England. He has always been placed in positions of responsibility throughout his Army career.

Since October 1995, Ted Pusey has served with distinction in the Army's Office of Legislative Liaison where he has superbly represented the Army Chief of Staff and Secretary and promoted the interests of soldiers and civilians of the Army. His professionalism, mature judgment and interpersonal skills earned him the respect and confidence of the Members of Congress and Congressional staff with whom he worked. In over 8 years on Capitol Hill, Ted Pusey has been a true friend of not only the Army he loves, but also of the United States Senate and the Congress. Serving as the primary point of contact for all Senators, their staffs, and committees, he helped Congress understand Army policies, actions, operations and requirements in a prompt, coordinated and factual manner. Additionally, he provided invaluable assistance to Members and their staffs while planning, coordinating and accompanying Senate delegations traveling worldwide. His substantive knowledge of the key issues, insight, and ability to effectively advise senior members of the Army leadership directly contributed to the successful representation of the Army's interests before Congress.

Throughout his career, Ted Pusey has demonstrated his profound commitment to our Nation, his selfless service to the Army, and a deep concern for soldiers and their families. Committed to excellence, he has been a consummate professional who, in over 27 years of service, has personified those traits of courage, competency and integrity that our Nation has come to expect from its professional Army officers.

I ask that my colleagues join me in thanking LTC Ted Pusey for his honorable service to the Army of the United States. We wish him and his family all the best in the future.●

MEASURE HELD AT DESK

The following resolution was ordered held at the desk by unanimous consent:

S. Res. 71. A resolution expressing the support for the Pledge of Allegiance.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1344. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to

the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–1345. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Russia, Ukraine and Norway; to the Committee on Foreign Relations.

EC–1346. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Russia and Kazakhstan; to the Committee on Foreign Relations.

EC–1347. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $25,000,000 or more to Japan; to the Committee on Finance.

EC–1348. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad to Japan; to the Committee on Foreign Relations.

EC–1349. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule that amends 42.72(b) of Part 22 of the Code of Federal Regulations, eliminating the extended visa validity benefit previously granted to certain aliens who qualify under section 154 of the Immigration Act 1990, received on February 14, 2003; to the Committee on Foreign Relations.

EC–1350. A communication from the President of the United States, transmitting, pursuant to the Authorization for Use of Military Force Against Iraq Resolution of 2002, the report to Congress, received on February 14, 2003; to the Committee on Foreign Relations.

EC–1351. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Jamaica Bay and Connecting Waterways, NY [CGD01–02–143] (2115–AE47) (2003–0011)'' received on February 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1352. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Annisquam River and Blyman Canal, MA [CGD 01–03–06] (2115–AE47) (2003–0010)'' received on February 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1353. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: Upper Mississippi River, Mile Marker 14.5 to 16.0, Cairo, IL [COPT Paducah, KY 03–003] (2115–AA97)(2003–0014)'' received on February 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1354. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Technical Amendments: Coast Guard transition to Department of Homeland Security; technical amendments reflecting organizational changes (2115–ZZ02)(2003–001)'' received on February 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1355. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations (Including 3 regulations) [CGD08–03–006] [CGD08–03–004] [CGD08–03–005] (2115–AE47)(2003–0012)'' received on February 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1356. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Notifications of Arrival in U.S. Ports (USCG–2002–11865) (2115–AG35)'' received on February 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1357. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; (Including 141 regulations) (2115–AA97)(2003–0013)'' received on February 27, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1358. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the interim report entitled ''Interim Evaluation Report: Congressionally Mandated Evaluation of State Children's Health Insurance Program'' received on February 28, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–1359. A communication from the Acting Assistant General Counsel for Regulatory Services, Office of the Chief Financial Officer, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Administrative Wage Garnishment'' received on February 27, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–1360. A communication from the Secretary of Defense, transmitting, pursuant to law, the report relative to the establishment of the position of Under Secretary of Defense for Intelligence; to the Select Committee on Intelligence.

EC–1361. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law, the report relative to violations of the Antideficiency Act by the Department of the Air Force, case no. 00–05, which total $2,693,812.07; to the Committee on Appropriations.

EC–1362. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Livestock Indemnity Program (0560–AG33)'' received on February 28, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1363. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Farm Labor Programs Account Servicing Policies—Reduction of Amortized Shared Appreciation Recapture Authorization Rate (0560–AG43)'' received on February 28, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1364. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Tobacco Loss Assistance Program (0560–AG61)'' received on February 28, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1365. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Certified Mediation Program (0560–AE02)'' received on February 28, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1366. A communication from the Chief, Regulatory Review and Foreign Investment Disclosure Group, Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Hard White Wheat Incentive Program (RIN 0560–AG71)'' received on February 28, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1367. A communication from the Administrator, Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled Apple Market Loss Assistance Payment Program III (0560–AG85)'' received on February 28, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1368. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, transmitting, pursuant to law, the report of a rule entitled ''Mexican Fruit Fly, Treatments (Doc. No. 02–129–2)'' received on February 27, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1369. A communication from the Federal Highway Administration, Regulations Officer, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Design Build Contracting (2125–AE79)'' received on February 28, 2003; to the Committee on Environment and Public Works.

EC–1370. A communication from the Chief Counsel, St. Lawrence Seaway Development Corporation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Seaway Regulations and Rules: Automatic Identification System (2135–AA15)'' received on February 28, 2003; to the Committee on Environment and Public Works.

EC–1371. A communication from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''List of Approved Spent Fuel Storage Casks: Fuel Solutions TM Cask System Revision (RIN 3150–AH13)'' received on February 27, 2003; to the Committee on Environment and Public Works.

EC–1372. A communication from the Director, Regulations and Forms Development, Immigrations and Naturalization Service, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Readjustment of Immigration Benefit Application Fees (RIN 1115–AH00) (INS No. 2260–3)'' received on February 27, 2003; to the Committee on the Judiciary.

EC–1373. A communication from the Director, Regulations and Forms Services Division, Immigrations and Naturalization Service, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Abbreviation or Waiver of Training for State or Local Law Enforcement Officers Authorized to Enforce Immigration Low During a Mass Influx of Aliens (RIN 1115–AF84) (INS No. 2241–02)'' received on February 27, 2003; to the Committee on the Judiciary.

EC–1374. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Emergency Acquisition in Regions Subject to Economic Sanctions (DFARS Case 2002–DO31)'' received on February 28, 2003; to the Committee on Armed Services.

EC–1375. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Fish, Shellfish and Seafood Products (DFARS Case 2002–DO34)'' received on February 28, 2003; to the Committee on Armed Services.

EC–1376. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Contractor Performance of Security Guard Functions (DFARS 2002–DO42)'' received on February 28, 2003; to the Committee on Armed Services.

EC–1377. A communication from the Assistant Director, Executive and Political Personnel, Department of the Army, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army (Civil Works), received on February 24, 2003; to the Committee on Armed Services.

EC–1378. A communication from the Assistant Director, Executive and Political Personnel, Department of the Army, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of Defense, received on February 20, 2003; to the Committee on Armed Services.

EC–1379. A communication from the Chief, Programs and Legislative Division, Office of Legislative Liaison, Office of the Secretary, Department of the Air Force, transmitting, pursuant to law, the report relative to a multi-function cost comparison of the base support functions at Keesler Air Force Base (AFB), Mississippi, received on February 29, 2003; to the Committee on Armed Services.

EC–1380. A communication from the Chief, Programs and Legislative Division, Office of Legislative Liaison, Office of the Secretary, Department of the Air Force, transmitting, pursuant to law, the report relative to a multi-function cost comparison of the Base Operating Support Functions at Homestead Air Reserve Station (ARS), Florida, received on February 19, 2003; to the Committee on Armed Services.

EC–1381. A communication from the Under Secretary of Defense, Acquisition, Technology and Logistics, transmitting, pursuant to law, the report relative to the percentage of funds that were expended during the preceding two fiscal years for performance of depot-level maintenance and repair workloads by the public and private sectors; to the Committee on Armed Services.

EC–1382. A communication from the Assistant Secretary of Defense, Health Affairs, Department of Defense, transmitting, pursuant to law, the report relative to the effectiveness of the Department of Defense Mental Health Wraparound Demonstration Program; to the Committee on Armed Services.

EC–1383. A communication from the Secretary of Homeland Security, transmitting, Office of the Secretary, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Restrictions on Lobbying (RIN 1601–AA12)'' received on February 28, 2003; to the Committee on Governmental Affairs.

EC–1384. A communication from the Director, Retirement and Insurance Service, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Federal Long Term Care Insurance Regulation (3206–AJ71)'' received on February 28, 2003; to the Committee on Governmental Affairs.

EC–1385. A communication from the President, Federal Financing Bank, transmitting, pursuant to law, the management report of the Federal Financing Bank (the FFB) for fiscal year 2002; to the Committee on Governmental Affairs.

EC–1386. A communication from the Commissioner, Social Security Administration, transmitting, pursuant to law, the report of the Social Security Administration (SSA) annual inventory of commercial activities; to the Committee on Governmental Affairs.

EC–1387. A communication from the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the Government National Mortgage Association (Ginnie Mae) management report for fiscal year ended September 30, 2002; to the Committee on Governmental Affairs.

EC–1388. A communication from the Administrator and Chief Executive Officer, Department of Energy, transmitting, pursuant to law, the 2002 Annual Report of the Bonneville Power Administration, received on February 24, 2003; to the Committee on Governmental Affairs.

EC–1389. A communication from the Chairman, Securities and Exchange Commission, transmitting, pursuant to law, the report relative to the management controls of the Securities and Exchange Commission for the fiscal year ending September 30, 2003; to the Committee on Governmental Affairs.

EC–1390. A communication from the Secretary of Labor, transmitting, pursuant to law, the Fiscal Year 2002 Annual Report on Performance and Accountability, received on February 27, 2003; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, without amendment:

S. 342. A bill to amend the Child Abuse Prevention and Treatment Act to make improvements to and reauthorize programs under that Act, and for other purposes (Rept. No. 108–12).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. KERRY (for himself, Mr. GRASSLEY, and Mr. LIEBERMAN):

S. 503. A bill to amend the Internal Revenue Code of 1986 to allow increase the minimum tax credit where stock acquired pursuant to an incentive stock option is sold or exchanged at a loss; to the Committee on Finance.

By Mr. ALEXANDER (for himself, Mr. REID, Mr. GREGG, Mr. SANTORUM, Mr. NICKLES, Mr. INHOFE, Mr. STEVENS, Mr. ENZI, Mr. COLEMAN, Mr. FRIST, Mr. DODD, and Mr. CORNYN):

S. 504. A bill to establish academics for teachers and students of American history and civics and a national alliance of teachers of American history and civics, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. HATCH (for himself, Mr. ROCKEFELLER, Mr. JEFFORDS, Ms. SNOWE, Mr. LIEBERMAN, Mr. SMITH, Mr. KERRY, Mr. ENSIGN, Mrs. CLINTON, Mr. CRAPO, Mr. DORGAN, Ms. COLLINS, and Mr. CHAFEE):

S. 505. A bill to amend the Internal Revenue Code of 1986 to encourage and accelerate the nationwide production, retail sale, and consumer use of new motor vehicles that are powered by fuel cell technology, hybrid technology, battery electric technology, alternative fuels, or other advanced motor vehicle technologies, and for other purposes; to the Committee on Finance.

By Mr. DURBIN (for himself, Mrs. CLINTON, Mr. KENNEDY, and Mr. SCHUMER):

S. 506. A bill to amend the Richard B. Russell National School Lunch Act to ensure the safety of meals served under the school lunch program and the school breakfast program; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. SNOWE (for herself, Mrs. FEINSTEIN, Mr. MCCAIN, Mr. KERRY, Mr. SMITH, and Mr. REID):

S. 507. A bill to amend the Internal Revenue Code of 1986 to provide incentives to introduce new technologies to reduce energy consumption in buildings; to the Committee on Finance.

By Mr. GRAHAM of South Carolina (for himself and Mr. HOLLINGS):

S. 508. A bill to designate the facility of the United States Postal Service located at 1830 South Lake Drive in Lexington, South Carolina, as the ''Floyd Spence Post Office Building''; to the Committee on Governmental Affairs.

By Mrs. FEINSTEIN (for herself, Mr. FITZGERALD, Mr. LUGAR, Mr. HARKIN, Ms. CANTWELL, Mr. WYDEN, and Mr. LEAHY):

S. 509. A bill to modify the authority of the Federal Energy Regulatory Commission to conduct investigations, to increase the penalties for violations of the Federal Power Act and Natural Gas Act, to authorize the Chairman of the Federal Energy Regulatory Commission to contract for consultant services, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. SNOWE (for herself and Ms. COLLINS):

S. 510. A bill to establish a commercial truck highway safety demonstration program in the State of Maine, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BINGAMAN (for himself, Mr. ENSIGN, Mr. LEAHY, and Mr. REID):

S. 511. A bill to provide permanent funding for the Payment In Lieu of Taxes program, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. VOINOVICH (for himself, Mrs. LINCOLN, and Mr. DURBIN):

S. 512. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts paid on behalf of Federal employees under Federal student loan repayment programs; to the Committee on Finance.

By Mr. BAYH:

S. 513. A bill to amend the Internal Revenue Code of 1986 and the Securities Exchange Act of 1934 to provide for the treatment of corporate expatriation transactions, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. MURKOWSKI (for herself, Mr. MCCONNELL, Mr. GREGG, Mr. HATCH,

Mr. ALLEN, Mr. ALEXANDER, Mr. ALLARD, Mr. BENNETT, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. CHAFEE, Mr. CHAMBLISS, Mr. COCHRAN, Mr. COLEMAN, Ms. COLLINS, Mr. CORNYN, Mr. CRAIG, Mr. CRAPO, Mr. DEWINE, Mrs. DOLE, Mr. ENSIGN, Mr. FITZGERALD, Mr. GRAHAM of South Carolina, Mr. HAGEL, Mrs. HUTCHISON, Mr. INHOFE, Mr. KYL, Mr. LOTT, Mr. LUGAR, Mr. MCCAIN, Mr. NICKLES, Mr. ROBERTS, Mr. SANTORUM, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Mr. STEVENS, Mr. SUNUNU, Mr. TALENT, Mr. THOMAS, Mr. WARNER, Mr. SESSIONS, and Ms. LANDRIEU):

S. Res. 71. A resolution expressing the support for the Pledge of Allegiance; ordered held at the desk.

By Mr. FRIST:

S. Res. 72. A resolution electing William H. Pickle of Colorado as the Sergeant at Arms and Doorkeeper of the Senate; considered and agreed to.

By Ms. CANTWELL (for herself, Mrs. MURRAY, Mr. REID, and Mr. BROWNBACK):

S. Res. 73. A resolution remembering and honoring the heroic lives of astronauts Air Force Lieutenant Colonel Michael Anderson and Navy Commander William ''Willie'' McCool; considered and agreed to.

ADDITIONAL COSPONSORS

S. 2

At the request of Mr. NICKLES, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 2, a bill to amend the Internal Revenue Code of 1986 to provide additional tax incentives to encourage economic growth.

S. 157

At the request of Mr. CORZINE, the names of the Senator from Nevada (Mr. REID) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 157, a bill to help protect the public against the threat of chemical attacks.

S. 251

At the request of Mr. LOTT, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 251, a bill to amend the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in the general fund of the Treasury.

S. 255

At the request of Mrs. FEINSTEIN, the names of the Senator from Nevada (Mr. REID) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 255, a bill to amend title 49, United States Code, to require phased increases in the fuel efficiency standards applicable to light trucks; to require fuel economy standards for automobiles up to 10,000 pounds gross vehicle weight; to increase the fuel economy of the Federal fleet of vehicles, and for other purposes.

S. 274

At the request of Mr. GRASSLEY, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 274, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

S. 300

At the request of Mr. KERRY, the names of the Senator from New York (Mrs. CLINTON) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 300, a bill to award a congressional gold medal to Jackie Robinson (posthumously), in recognition of his many contributions to the Nation, and to express the sense of Congress that there should be a national day in recognition of Jackie Robinson.

S. 324

At the request of Mr. LEVIN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 324, a bill to amend the National Trails System Act to clarify Federal authority relating to land acquisition from willing sellers for certain trails in the National Trails System.

S. 330

At the request of Mr. CAMPBELL, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 330, a bill to further the protection and recognition of veterans' memorials, and for other purposes.

S. 349

At the request of Mrs. FEINSTEIN, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 349, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 363

At the request of Ms. MIKULSKI, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 363, a bill to amend title II of the Social Security Act to provide that the reductions in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 372

At the request of Mr. THOMAS, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 372, a bill to amend the National Environmental Policy At of 1969 to require that Federal agencies consult with State agencies and county and local governments on environmental impact statements.

S. 374

At the request of Mr. BAUCUS, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 374, a bill to amend the Internal Revenue Code of 1986 to repeal the occupational taxes relating to distilled spirits, wine, and beer.

S. 378

At the request of Mr. DASCHLE, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 378, a bill to recruit and retain more qualified individuals to teach in Tribal Colleges or Universities.

S. 380

At the request of Ms. COLLINS, the names of the Senator from Arkansas (Mr. PRYOR), the Senator from Vermont (Mr. JEFFORDS), the Senator from New Hampshire (Mr. SUNUNU) and the Senator from Minnesota (Mr. COLEMAN) were added as cosponsors of S. 380, a bill to amend chapter 83 of title 5, United States Code, to reform the funding of benefits under the Civil Service Retirement System for employees of the United States Postal Service, and for other purposes.

S. 457

At the request of Mr. LEAHY, the names of the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. CARPER), the Senator from New Jersey (Mr. CORZINE), the Senator from Illinois (Mr. DURBIN), the Senator from Arizona (Mr. MCCAIN), the Senator from Washington (Mrs. MURRAY) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. 457, a bill to remove the limitation on the use of funds to require a farm to feed livestock with organically produced feed to be certified as an organic farm.

S. 468

At the request of Ms. STABENOW, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 468, a bill to amend the Agriculture and Consumer Protection Act of 1973 to assist the neediest of senior citizens by modifying the eligibility criteria for supplemental foods provided under the commodity supplemental food program to take into account the extraordinarily high out-of-pocket medical expenses that senior citizens pay.

S. 470

At the request of Mr. SARBANES, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 470, a bill to extend the authority for the construction of a memorial to Martin Luther King, Jr.

S. 480

At the request of Mr. HARKIN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 480, a bill to provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 498

At the request of Mr. HOLLINGS, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 498, a bill to authorize the President to posthumously award a gold medal on behalf of Congress to Joseph A. De Laine in recognition of his contributions to the Nation.

S. 501

At the request of Mr. GRASSLEY, the name of the Senator from Mississippi

(Mr. LOTT) was added as a cosponsor of S. 501, a bill to provide a grant program for gifted and talented students, and for other purposes.

S.J. RES. 7

At the request of Ms. LANDRIEU, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S.J. Res. 7, A joint resolution proposing an amendment to the Constitution of the United States relative to the reference to God in the Pledge of Allegiance and on United States currency.

S. RES. 48

At the request of Mr. AKAKA, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. Res. 48, A resolution designating April 2003 as ''Financial Literacy for Youth Month''.

S. RES. 62

At the request of Mr. ENSIGN, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. Res. 62, A resolution calling upon the Organization of American States (OAS) Inter-American Commission on Human Rights, the United Nations High Commissioner for Human Rights, the European Union, and human rights activists throughout the world to take certain actions in regard to the human rights situation in Cuba.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ALEXANDER (for himself, Mr. REID, Mr. GREGG, Mr. SANTORUM, Mr. NICKLES, Mr. INHOFE, Mr. STEVENS, Mr. ENZI, Mr. COLEMAN, Mr. FRIST, Mr. DODD, and Mr. CORNYN):

S. 504. A bill to establish academics for teachers and students of American history and civics and a national alliance of teachers of American history and civics, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 504

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''American History and Civics Education Act of 2003''.

SEC. 2. DEFINITIONS.

In this Act:

(1) AMERICAN HISTORY AND CIVICS.—The term ''American history and civics'' means the key events, key persons, key ideas, and key documents that shaped the institutions and democratic heritage of the United States.

(2) CHAIRPERSON.—The term ''Chairperson'' means the Chairperson of the National Endowment for the Humanities.

(3) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(4) KEY DOCUMENTS.—The term ''key documents'' means the documents that established or explained the foundational principles of democracy in the United States, including the United States Constitution and the amendments to the Constitution (particularly the Bill of Rights), the Declaration of Independence, the Federalist Papers, and the Emancipation Proclamation.

(5) KEY EVENTS.—The term ''key events'' means the critical turning points in the history of the United States (including the American Revolution, the Civil War, the world wars of the twentieth century, the civil rights movement, and the major court decisions and legislation) that contributed to extending the promise of democracy in American life.

(6) KEY IDEAS.—The term ''key ideas'' means the ideas that shaped the democratic institutions and heritage of the United States, including the notion of equal justice under the law, freedom, individualism, human rights, and a belief in progress.

(7) KEY PERSONS.—The term ''key persons'' means the men and women who led the United States as founding fathers, elected officials, scientists, inventors, pioneers, advocates of equal rights, entrepreneurs, and artists.

(8) NONPROFIT EDUCATIONAL INSTITUTION.—The term ''nonprofit educational institution''—

(A) means—

(i) an institution of higher education; or

(ii) a nonprofit educational research center; and

(B) includes a consortium of entities described in subparagraph (A).

(9) STATE.—The term ''State'' means each of the 50 States and the District of Columbia.

SEC. 3. PRESIDENTIAL ACADEMIES FOR TEACHING OF AMERICAN HISTORY AND CIVICS.

(a) ESTABLISHMENT.—From amounts appropriated under subsection (j), the Chairperson shall award grants, on a competitive basis, to nonprofit educational institutions to establish Presidential Academies for Teaching of American History and Civics (in this section referred to as ''Academies'') that shall offer workshops for teachers of American history and civics—

(1) to learn how better to teach the subjects of American history and civics; and

(2) to strengthen such teachers' knowledge of such subjects.

(b) APPLICATION.—

(1) IN GENERAL.—A nonprofit educational institution that desires to receive a grant under this section shall submit an application to the Chairperson at such time, in such manner, and containing such information as the Chairperson may require.

(2) CONTENTS.—An application submitted under paragraph (1) shall—

(A) include the criteria the nonprofit educational institution intends to use to determine which teachers will be selected to attend workshops offered by the Academy;

(B) identify the individual the nonprofit educational institution intends to appoint to be the primary professor at the Academy; and

(C) include a description of the curriculum to be used at workshops offered by the Academy.

(c) NUMBER OF GRANTS.—Except as provided in subsection (e)(2)(B), the Chairperson shall award not more than 12 grants to different nonprofit educational institutions under this section.

(d) DISTRIBUTION.—In awarding grants under this section, the Chairperson shall ensure that such grants are equitably distributed among the geographical regions of the United States.

(e) GRANT TERMS.—

(1) IN GENERAL.—Grants awarded under this section shall be for a term of 2 years.

(2) GRANTS AFTER FIRST TWO YEARS.—Upon completion of the first 2-year grant term, the Chairperson shall—

(A) renew a grant awarded under this section to a nonprofit educational institution for one more term of 2 years; or

(B) award a new grant to a nonprofit educational institution having an application approved under this section for a term of 2 years, notwithstanding the 12 grant award maximum under subsection (c).

(f) USE OF FUNDS.—

(1) WORKSHOPS.—

(A) IN GENERAL.—A nonprofit educational institution that receives a grant under this section shall establish an Academy that shall offer a workshop during the summer, or during another appropriate time, for kindergarten through grade 12 teachers of American history and civics—

(i) to learn how better to teach the subjects of American history and civics; and

(ii) to strengthen such teachers' knowledge of such subjects.

(B) DURATION OF WORKSHOP.—A workshop offered pursuant to this section shall be approximately 2 weeks in duration.

(2) ACADEMY STAFF.—

(A) PRIMARY PROFESSOR.—Each Academy shall be headed by a primary professor identified in the application submitted under subsection (b) who shall—

(i) be accomplished in the field of American history and civics; and

(ii) design the curriculum for and lead the workshop.

(B) CORE TEACHERS.—Each primary professor shall appoint an appropriate number of core teachers. At the direction of the primary professor, the core teachers shall teach and train the workshop attendees.

(3) SELECTION OF TEACHERS.—

(A) IN GENERAL.—

(i) NUMBER OF TEACHERS.—Each year, each Academy shall select approximately 300 kindergarten through grade 12 teachers of American history and civics to attend the workshop offered by the Academy.

(ii) FLEXIBILITY IN NUMBER OF TEACHERS.—An Academy may select more than or fewer than 300 teachers depending on the population in the region where the Academy is located.

(B) TEACHERS FROM SAME REGION.—In selecting teachers to attend a workshop, an Academy shall select primarily teachers who teach in schools located in the region where the Academy is located.

(C) TEACHERS FROM PUBLIC AND PRIVATE SCHOOLS.—An Academy may select teachers from public schools and private schools to attend the workshop offered by the Academy.

(g) COSTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a teacher who attends a workshop offered pursuant to this section shall not incur costs associated with attending the workshop, including costs for meals, lodging, and materials while attending the workshop.

(2) TRAVEL COSTS.—A teacher who attends a workshop offered pursuant to this section shall use non-Federal funds to pay for such teacher's costs of transit to and from the Academy.

(h) EVALUATION.—Not later than 90 days after completion of all of the workshops assisted in the third year grants are awarded under this section, the Chairperson shall conduct an evaluation to—

(1) determine the overall success of the grant program authorized under this section; and

(2) highlight the best grantees' practices in order to become models for future grantees.

(i) NON-FEDERAL FUNDS.—A nonprofit educational institution receiving Federal assistance under this section may contribute non-Federal funds toward the costs of operating the Academy.

(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $7,000,000 for each of fiscal years 2004 through 2007.

SEC. 4. CONGRESSIONAL ACADEMIES FOR STUDENTS OF AMERICAN HISTORY AND CIVICS.

(a) ESTABLISHMENT.—From amounts appropriated under subsection (j), the Chairperson shall award grants, on a competitive basis, to nonprofit educational institutions to establish Congressional Academies for Students of American History and Civics (in this section referred to as ''Academies'') that shall offer workshops for outstanding students of American history and civics to broaden and deepen such students' understanding of American history and civics.

(b) APPLICATION.—

(1) IN GENERAL.—A nonprofit educational institution that desires to receive a grant under this section shall submit an application to the Chairperson at such time, in such manner, and containing such information as the Chairperson may require.

(2) CONTENTS.—An application submitted under paragraph (1) shall—

(A) include the criteria the nonprofit educational institution intends to use to determine which students will be selected to attend workshops offered by the Academy;

(B) identify the individual the nonprofit educational institution intends to appoint to be the primary professor at the Academy; and

(C) include a description of the curriculum to be used at workshops offered by the Academy.

(c) NUMBER OF GRANTS.—Except as provided in subsection (e)(2)(B), the Chairperson shall award not more than 12 grants to different nonprofit educational institutions under this section.

(d) DISTRIBUTION.—In awarding grants under this section, the Chairperson shall ensure that such grants are equitably distributed among the geographical regions of the United States.

(e) GRANT TERMS.—

(1) IN GENERAL.—Grants awarded under this section shall be for a term of 2 years.

(2) GRANTS AFTER FIRST TWO YEARS.—Upon completion of the first 2-year grant term, the Chairperson shall—

(A) renew a grant awarded under this section to a nonprofit educational institution for one more term of 2 years; or

(B) award a new grant to a nonprofit educational institution having an application approved under this section for a term of 2 years, notwithstanding the 12 grant award maximum under subsection (c).

(f) USE OF FUNDS.—

(1) WORKSHOPS.—

(A) IN GENERAL.—A nonprofit educational institution that receives a grant under this section shall establish an Academy that shall offer a workshop during the summer, or during another appropriate time, for outstanding students of American history and civics to broaden and deepen such students' understanding of American history and civics.

(B) DURATION OF WORKSHOP.—A workshop offered pursuant to this section shall be approximately 4 weeks in duration.

(2) ACADEMY STAFF.—

(A) PRIMARY PROFESSOR.—Each Academy shall be headed by a primary professor identified in the application submitted under subsection (b) who shall—

(i) be accomplished in the field of American history and civics; and

(ii) design the curriculum for and lead the workshop.

(B) CORE TEACHERS.—Each primary professor shall appoint an appropriate number of core teachers. At the direction of the primary professor, the core teachers shall teach the workshop attendees.

(3) SELECTION OF STUDENTS.—

(A) IN GENERAL.—

(i) NUMBER OF STUDENTS.—Each year, each Academy shall select approximately 300 eligible students to attend the workshop offered by the Academy.

(ii) FLEXIBILITY IN NUMBER OF STUDENTS.—An Academy may select more than or fewer than 300 eligible students depending on the population in the region where the Academy is located.

(B) ELIGIBLE STUDENTS.—A student shall be eligible to attend a workshop offered by an Academy if the student—

(i) is recommended by the student's secondary school principal (or other head of such student's secondary school) to attend the workshop; and

(ii) will be a junior or senior in a public or private secondary school in the academic year following attendance at the workshop.

(C) STUDENTS FROM SAME REGION.—In selecting students to attend a workshop, an Academy shall select primarily students who attend secondary schools located in the region where the Academy is located.

(g) COSTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a student who attends a workshop offered pursuant to this section shall not incur costs associated with attending the workshop, including costs for meals, lodging, and materials while attending the workshop.

(2) TRAVEL COSTS.—A student who attends a workshop offered pursuant to this section shall use non-Federal funds to pay for such student's costs of transit to and from the Academy.

(h) EVALUATION.—Not later than 90 days after completion of all of the workshops assisted in the third year grants are awarded under this section, the Chairperson shall conduct an evaluation to—

(1) determine the overall success of the grant program authorized under this section; and

(2) highlight the best grantees' practices in order to become models for future grantees.

(i) NON-FEDERAL FUNDS.—A nonprofit educational institution receiving Federal assistance under this section may contribute non-Federal funds toward the costs of operating the Academy.

(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $14,000,000 for each of fiscal years 2004 through 2007.

SEC. 5. NATIONAL ALLIANCE OF TEACHERS OF AMERICAN HISTORY AND CIVICS.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—From amounts appropriated under subsection (e), the Chairperson shall award a grant to an organization for the creation of a national alliance of elementary school and secondary school teachers of American history and civics.

(2) PURPOSE.—The purpose of the national alliance is—

(A) to facilitate the sharing of ideas among teachers of American history and civics; and

(B) to encourage best practices in the teaching of American history and civics.

(b) APPLICATION.—An organization that desires to receive a grant under this section shall submit an application to the Chairperson at such time, in such manner, and containing such information as the Chairperson may require.

(c) GRANT TERM.—A grant awarded under this section shall be for a term of 2 years and may be renewed after the initial term expires.

(d) USE OF FUNDS.—An organization that receives a grant under this section may use the grant funds for any of the following:

(1) Creation of a website on the Internet to facilitate discussion of new ideas on improving American history and civics education.

(2) Creation of in-State chapters of the national alliance, to which individual teachers of American history and civics may belong, that sponsors American history and civics activities for such teachers in the State.

(3) Seminars, lectures, or other events focused on American history and civics, which may be sponsored in cooperation with, or through grants awarded to, libraries, States' humanities councils, or other appropriate entities.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $4,000,000 for each of fiscal years 2004 through 2007.

By Mr. HATCH (for himself, Mr. ROCKEFELLER, Mr. JEFFORDS, Ms. SNOWE, Mr. LIEBERMAN, Mr. SMITH, Mr. KERRY, Mr. ENSIGN, Mrs. CLINTON, Mr. CRAPO, Mr. DORGAN, Ms. COLLINS, and Mr. CHAFEE):

S. 505. A bill to amend the Internal Revenue Code of 1986 to encourage and accelerate the nationwide production, retail sale, and consumer use of new motor vehicles that are powered by fuel cell technology, hybrid technology, battery electric technology, alternative fuels, or other advanced motor vehicle technologies, and for other purposes; to the Committee on Finance.

Mr. HATCH. Madam President, I rise today to introduce the CLEAR ACT, which is short for the Clean Efficient Automobiles Resulting from Advanced Car Technologies Act of 2003.

Joining me in this effort are Senators JOHN ROCKEFELLER and JIM JEFFORDS, who have been my partners in this legislation and its earlier versions since the 106th Congress. We are also being joined by an impressive and bipartisan lineup of original cosponsors, which includes Senators OLYMPIA SNOWE, JOHN KERRY, GORDON SMITH, JOE LIEBERMAN, JOHN ENSIGN, HILLARY CLINTON, MIKE CRAPO, BYRON DORGAN, SUSAN COLLINS, and LINCOLN CHAFEE.

I believe the CLEAR ACT is the most comprehensive and effective plan we have seen in this country to accelerate the transformation of the automotive marketplace toward the widespread use of fuel cell vehicles. And it does so without any new Federal mandates. Instead, it offers powerful market incentives to promote the combination of advances we must have in technology, in infrastructure, and in alternative fuels if our goal of bringing fuel cell vehicles to the mass market is to become a reality.

As many of my colleagues know, fuel cell vehicles are the most promising long-term automotive technology, offering breakthrough fuel economy of up to three times today's levels with zero emissions. For a variety of reasons, the commercial production of fuel cell vehicles is a number of years away. Many things need to change in the automotive marketplace before

widespread use of these vehicles of the future becomes a reality. With the CLEAR ACT, we can achieve this goal much faster, while in the meantime we can reap the benefits of cleaner air and a reduced dependency on foreign oil.

Bridging the gap between today's conventional vehicles and the day when all of us will be driving fuel cell vehicles are alternative fuel and advanced technology vehicles, such as hybrid electrics. These vehicles are available today, but not yet widely accepted in the marketplace.

Currently, consumers face three basic obstacles to accepting the use of these alternative fueled and advanced technology vehicles. These obstacles are the higher cost of these vehicles as compared with their conventional counterparts, the cost of the alternative fuel, and the lack of an adequate infrastructure of alternative fueling stations. Mr. President, the CLEAR ACT would lower all three of these barriers.

First, we provide a tax credit of 50 cents per gasoline-gallon equivalent for the purchase of alternative fuel at retail. This would bring the price of these cleaner fuels much closer in line with conventional automotive fuels. And, to give customers better access to alternative fuel, we extend an existing deduction for the capital costs of installing alternative fueling stations. We also provide a 50-percent credit for the installation costs of retail and residential refueling stations.

Finally, we offer CLEAR ACT credits to consumers who purchase alternative fuel and advanced technology vehicles. These credits would lower the price gap between these cleaner and more efficient vehicles and conventionally fueled vehicles of the same type. To make certain that the tax benefit we provide translates into a corresponding benefit to the environment, we split the vehicle tax credit into two. The amount the consumer receives in a CLEAR ACT credit would depend, first, on the level of technology used in the vehicle and, second, on the fuel efficiency and emissions reduction of the vehicle. In this way, we are confident that the CLEAR ACT will create the greatest social benefit possible for every tax dollar.

The transportation sector in the U.S. accounts for nearly two-thirds of all oil consumption, and we are 97-percent dependent on petroleum for our transportation needs. Is it any wonder that 50 percent of our urban smog is caused by mobile sources? If we want to clean our air and address our Nation's energy dependency, we must focus on the transportation sector. And we must focus first on those technologies and alternative fuels that are already available and abundant domestically. The CLEAR ACT is the shortest path to achieving these goals.

Air pollution and energy independence are issues of critical concern in my home State of Utah. According to a study by Utah's Division of Air Quality, on-road vehicles in Utah account for 22 percent of particulate matter. This particulate matter can be harmful to citizens who suffer from chronic respiratory or heart disease, influenza, or asthma. Automobiles also contribute significantly to hydrocarbon and nitrogen oxide emissions in my State. These two pollutants react in sunlight to form ozone, which in turn reduces lung function in humans and hurts our resistance to colds and asthma. In addition, vehicles account for as much as 87 percent of carbon monoxide emissions. Carbon monoxide can be harmful to persons with heart, respiratory, or circulatory ailments.

While Utah has made important strides in improving air quality, it is a fact that each year more vehicular miles are driven in our State. It is clear that if we are to have cleaner air, we must encourage the use of alternative fuels and technologies to reduce vehicle emissions.

Another key aim of the CLEAR ACT is greater energy independence. Whether during the energy crisis in the 1970s, during the Persian Gulf war, or during our current energy challenge, every American has felt the sting of our dependence on foreign oil. And I might add that our dependency on foreign oil has steadily increased to the point where we now depend on foreign sources for about 60 percent of our oil. When enacted, the CLEAR ACT will play a key role in helping our Nation improve its energy security by increasing the diversity of our fuel options and decreasing our dependency on gasoline.

Our Nation's energy strategy will not be complete without an incentive to increase the use of alternative fuels and advanced car technologies. In the future we will not use gasoline-fueled vehicles to the same extent we do today. The technology is here today to help transform us to the benefits of the future much sooner. We just need to find a way to lower those barriers to widespread consumer acceptance, which will in turn put the power of mass production to work to lower the incremental cost of this technology. In short, our legislation would bring the benefits of cleaner air and energy independence to our citizens sooner.

I am very proud to offer this groundbreaking and bipartisan legislation. It represents the input and hard work of a very powerful and effective coalition the CLEAR ACT Coalition. This coalition includes the Union of Concerned Scientists, Ford Motor Company, the Natural Resource Defense Council, Toyota, Environmental Defense, Honda, the Alliance to Save Energy, the Natural Gas Vehicle Coalition, the Propane Vehicle Council, the Methanol Institute, and others. The CLEAR ACT reflects the untiring effort and expertise of the members of this coalition, and for this we owe them our gratitude.

I urge my colleagues in the Senate to join me, the CLEAR ACT's cosponsors, and this coalition in this forward-looking approach to cleaner air and increased energy independence.

I ask unanimous consent that a summary of the CLEAR ACT be inserted in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE CLEAR ACT OF 2003 (CLEAN EFFICIENT AUTOMOBILES RESULTING FROM ADVANCED CAR TECHNOLOGIES)

OVERVIEW

The primary purpose of this bill is to enhance national energy security and promote cleaner air by reducing the consumption of petroleum and advancing alternative fuels. Transportation accounts for nearly ⅔ of all oil consumption and is almost 97 percent dependent on petroleum.

This legislation will set the stage for a consumer-based and technology-led transformation of the transportation marketplace. All major vehicle manufacturers are introducing new technology and alternative fuel vehicles into the marketplace. These new technologies reduce petroleum consumption and improve air quality as a result of breakthrough improvements in fuel economy or from the use of non-petroleum alternative fuels. Accelerated acceptance by consumers of these new technologies is needed to increase production volumes and make them cost competitive with conventional vehicles.

Providing tax incentives for a limited time to consumers will help offset the higher costs associated with new technology and alternative fuel vehicles. As the vehicles gain consumer acceptance and production volumes increase, the cost differential between these and conventional vehicles will be reduced or eliminated.

KEY COMPONENTS OF THE CLEAR ACT

Tax incentives for new technology and alternative fuel vehicles under this legislation go directly to the consumer. These incentives are based both on technology and performance.

Fuel Cell Vehicles. Fuel cell vehicles are the most promising long-term technology offering breakthrough fuel economy of up to 3 times today's levels with zero emissions. The CLEAR ACT offers a $4,000 base credit ($8,000 for fuel cell vehicles placed in service before 2009) along with an additional credit of up to $4,000 depending on fuel economy performance. These credits are available for ten years.

Hybrid Electric Vehicles. Electronics that integrate electric drive with an internal combustion engine offer near-term improvements in fuel economy. The CLEAR ACT offers a credit of up to $1,000 for the amount of electric drive power along with an additional credit of up to $3,000 depending upon fuel economy performance. These credits are available for 6 years.

Dedicated Alternative Fuel Vehicles. Vehicles solely capable of running on alternative fuels promote energy diversity and significant emissions reductions. Natural gas, LPG, and LNG are the most commonly used fuels for dedicated alternative fuel vehicles. The CLEAR ACT provides a base credit of up to $2,500 with an additional $1,500 credit for vehicles certified to ''Super Ultra Low Emission'' (SULEV) standards. ''Flex-fuel'' vehicles are not eligible since they can operate on either gasoline or E85 (ethanol) and are available in the market without any incremental cost.

Battery Electric Vehicles. Vehicles that utilize stored energy from ''plug-in'' rechargeable batteries offer zero emissions and are not dependent upon petroleum-based

fuels. The CLEAR ACT offers a base credit of $4,000 and an incremental credit of $2,000 for vehicles with extended range or payload capabilities.

Medium and Heavy Duty Vehicles. Medium and heavy duty applications of the same vehicle technologies utilized for passenger vehicles offer similar benefits related to energy efficiency, diversity, and emission reductions. The CLEAR ACT offers credits for individual weight categories and amounts vary with the largest vehicles over 26,000 pounds (e.g., large metro busses) receiving up to $40,000 for fuel cell or battery electric, $32,000 for alternative fuel, or $24,000 for hybrid applications.

Alternative Fuel Incentives. Alternative fuels such as natural gas, LNG, LPG, hydrogen, B100 (biomass) and methanol are primarily used in alternative fueled vehicles and fuel cell vehicles. To encourage the installation of distribution points to support these applications, a credit of up to 50 cents for every gallon of gas equivalent is provided to the retail distributor,. This credit is available for 6 years.

Alternative Fuel Infrastructure. Complimentary to the credit for the fuel itself, the CLEAR ACT extends the existing $100,000 tax deduction for 10 years and also provides a 50 percent credit for actual costs of up to $30,000 for the installation of alternative fuel sites available to the public.

BROAD COALITION SUPPORT

A broad and diverse group that includes representatives from the environmental community, automobile manufacturers, and alternative fuel groups support the CLEAR ACT. Environmental coalition support comes from the Union of Concerned Scientists, Natural Resources Defense Council, Environmental Defense, and the American Council for an Energy Efficient Economy. Ford Motor Company, Honda, and Toyota are among the key automotive industry supporters. Industry coalitions include the Natural Gas Vehicle Coalition, the Propane Vehicle Council, the American Methanol Institute, and the Electric Drive Transportation Association.

By Mr. DURBIN (for himself, Mrs. CLINTON, Mr. KENNEDY, and Mr. SCHUMER):

S. 506. A bill to amend the Richard B. Russell National School Lunch Act to ensure the safety of meals served under the school lunch program and the school breakfast program; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. DURBIN. Madam President, today I am introducing legislation that would dramatically improve the safety of food served in our Nation's schools. This bill, known as the Safe School Food Act, would fill gaps in the inspection, testing, procurement and preparation of food served to our schoolchildren, and provide school officials with the necessary tools and information to help them prevent food-borne illness among our most vulnerable population.

Each day, more than 27 million children eat meals provided through the National School Lunch Act. Despite increased attention in recent years to the safety of food provided to schoolchildren, there is evidence of serious problems with our school lunch system—between 1990 and 2000, there were nearly 100 reported outbreaks of food-borne illness in our schools affecting thousands of children, with several outbreaks resulting in significant health consequences. Since food-borne illness is preventable, these statistics indicate we are not doing enough to protect our children's health when they consume food served at our schools.

Currently, 17 percent of the food served in schools is donated by the Federal Government and undergoes stringent U.S. Department of Agriculture food-safety standards for inspections and pathogen testing. Suppliers' food safety records also are reviewed before they are granted contracts to provide food to the USDA donated commodity program. However, the remaining 83 percent of food consumed at schools is purchased locally and is not subject to these more stringent USDA donated commodity standards. State education officials also do not have access to the safety records of food suppliers to make the same informed decisions as their counterparts at the Federal level.

If a tainted product enters the food supply, it is often difficult for local education officials to quickly determine if they have that food in their schools' kitchens due to a complex web of food manufacturers, distributors, and brokers who deal with schools. A food producer's tainted food may be repackaged by a distributor, leaving a school unaware it is serving the product. And many Americans may be surprised to discover that our Federal food agencies do not even have the authority to mandate the recall of contaminated food in schools. Such recalls are currently voluntary.

The Safe School Food Act would address these gaps in our School Lunch Program and provide schools with the tools and information on how to more safely purchase and prepare food served to our children.

Improving Inspections: This legislation will ensure stringent inspection and pathogen testing for USDA meat, poultry, seafood, eggs, and produce donated to the School Lunch Program, and gives the USDA Secretary the authority to require similar pathogen testing as necessary for foods purchased directly by the schools. Cafeterias also would be inspected more frequently, inspection exemptions would be eliminated, and those inspection reports would be made available to the public.

Purchasing Safe Food: By incorporating USDA food safety guidelines in their procurement contracts to the maximum extent possible, schools will have the tools to help ensure the safety of the food they serve. And by providing State education officials with food-safety histories of the companies they purchase from, schools can make more informed decisions in the purchasing process.

Planning and Serving Safe Meals: The USDA will provide training and assistance to schools in the preparation of required plans to address the food-safety risks of meals they prepare.

Providing Notice and Recalling Unsafe Food: Each State will have an up-to-date list of the vendors and suppliers who provide food to their schools to enable easier tracking of food that may be tainted. If a food product that has been distributed to schools is found to be unsafe, the USDA Secretary will have the authority to require a mandatory recall of the product if voluntary efforts are unsuccessful. Designated food safety coordinators in each State will assist with recalls, as well as safety training and information-sharing issues.

Mr. President, I urge my colleagues to join me in this effort to improve the safety of the food served in our schools. The health of our schoolchildren is at stake.

I ask unanimous consent that a copy of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 506

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Safe School Food Act of 2003''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the national school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) is a federally-assisted meal program that—

(A) operates in more than 97,000 public and nonprofit private schools; and

(B) provides nutritionally balanced, low-cost or free lunches to more than 27,000,000 children each school day;

(2) children are among the populations most vulnerable to foodborne illness, which sickens an estimated 76,000,000 individuals in the United States each year;

(3) nearly 100 reported outbreaks of foodborne illnesses occurred in schools between 1990 and 2000;

(4) Department of Agriculture procurement policies and procedures—

(A) help ensure the safety of foods donated to schools, which comprise about 17 percent of the school lunch supply; but

(B) do not apply to the remaining 83 percent of food served under the national school lunch program, which is purchased locally by schools;

(5) it is essential to maintain public confidence in—

(A) the safety of the food supply in the schools of the United States; and

(B) the ability of the Federal Government and State governments to exercise adequate oversight of foods served in the schools of the United States; and

(6) public confidence can best be maintained by—

(A) improving Department of Agriculture procurement and testing standards, and extending the standards, to the maximum extent practicable, to foods purchased by schools;

(B) preparing and implementing plans to prevent identified food safety risks in the preparation of school meals; and

(C) improving food safety training, information sharing, and coordination between the Federal Government and States.

SEC. 3. IMPROVEMENTS TO THE SAFETY OF SCHOOL LUNCHES.

Section 9 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758) is amended—

(1) in subsection (h)—

(A) in paragraph (1)—

(i) by striking ''Except as provided in paragraph (2), a'' and inserting ''A'';

(ii) by striking ''shall, at least once'' and inserting the following: ''shall—

''(A) at least twice'';

(iii) by striking the period at the end and inserting a semicolon; and

(iv) by adding at the end the following:

''(B) post the report on the most recent inspection in a publicly visible location; and

''(C) make the report available to the public on request.'';

(B) by striking paragraph (2) and inserting the following:

''(2) STATE AND LOCAL GOVERNMENT INSPECTIONS.—Nothing in paragraph (1) prevents any State or local government from adopting or enforcing any requirement for more frequent food safety inspections of schools.''; and

(C) by adding at the end the following:

''(3) AUDITS AND REPORTS BY STATES.—Each State shall annually audit and submit to the Secretary a report on the food safety inspections of schools conducted under paragraphs (1) and (2).

''(4) AUDIT BY THE SECRETARY.—The Secretary shall annually audit State reports of food safety inspections of schools submitted under paragraph (3).''; and

(2) by adding at the end the following:

''(k) PROCUREMENT OF SAFE FOODS.—

''(1) ACTION BY SCHOOL FOOD AUTHORITIES.—Subject to paragraph (3), the Secretary shall require that a school food authority incorporate into the procurement contracts of the school food authority, to the maximum extent practicable, provisions to help ensure the safety of foods purchased by schools for a program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

''(2) RULEMAKING BY THE SECRETARY.—Not later than May 1, 2004, the Secretary shall promulgate final regulations to implement paragraph (1) that require—

''(A) each vendor that provides food products to be served by a school that participates in the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) to supply to the Secretary the name and contact information for each school food supplier of the vendor; and

''(B) as appropriate, pathogen testing during production of foods described in that paragraph.

''(3) GUIDANCE.—The Secretary shall provide guidance to school food authorities on ensuring the safety of food purchases not subject to the regulations promulgated under paragraph (2).

''(l) FOOD SAFETY PLANNING.—

''(1) IN GENERAL.—Each school that participates in the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall monthly prepare a plan that assesses—

''(A) the food safety risks inherent in the preparation and serving of meals; and

''(B) the appropriate methods to prevent or eliminate the identified food safety risks.

''(2) TRAINING AND TECHNICAL ASSISTANCE.—

''(A) IN GENERAL.—The Secretary shall provide training and technical assistance to State educational agencies to assist in preparation of the food safety plans required by paragraph (1).

''(B) USE OF FOOD SERVICE MANAGEMENT INSTITUTE.—In carrying out subparagraph (A), the Secretary shall use, to the maximum extent practicable, a food service management institute established under section 21(a)(2).

''(m) AUTHORITY TO RECALL FOOD PRODUCTS SERVED IN SCHOOL MEALS.—

''(1) DEFINITIONS.—In this subsection:

''(A) CLASS I RECALL.—The term 'Class I recall', with respect to a food product, means a recall that involves a health hazard situation where there is a reasonable probability that the use of, or exposure to, the food product will cause serious, adverse health consequences or death.

''(B) FOOD PRODUCT.—The term 'food product' means a commodity donated to, or a food product purchased by, a school for a program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

''(2) VOLUNTARY ACTIONS.—If the Secretary finds that there is a reasonable probability that human consumption of a food product that was, or may have been, distributed to schools would present a threat to public health, the Secretary shall provide each appropriate person (as identified by the Secretary) that prepared, processed, distributed, or otherwise handled the food product with an opportunity—

''(A) to recall and collect the food product;

''(B) to provide to the Secretary a list of individuals to whom the food product was sold or distributed; and

''(C) in consultation with the Secretary, to provide timely notification of the finding of the Secretary to the State food safety coordinator designated under section 12(q) of each State in which the food product was, or may have been, distributed, which notification shall include sufficient information to identify the affected food product.

''(3) MANDATORY ACTIONS.—

''(A) ORDER.—If any appropriate person identified by the Secretary under paragraph (2) does not carry out the actions described in that paragraph within the time period and in the manner required by the Secretary, the Secretary shall, by order, require, as the Secretary determines to be necessary, the person—

''(i)(I) to cease immediately distribution of the food product to schools; and

''(II) to promptly recall and collect the food product;

''(ii) to provide immediately to the Secretary a list of individuals to whom the food product was sold or distributed; and

''(iii) to make immediately the notification described in paragraph (2)(C).

''(B) INFORMAL HEARING.—The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of issuance of the order, on the actions required by the order.

''(C) VACATING OF ORDER.—If, after providing an opportunity for a hearing under subparagraph (B), the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(4) COORDINATION WITH SECRETARY OF HEALTH AND HUMAN SERVICES.—In the case of an activity under paragraph (2) or (3) carried out with respect to a food product regulated under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Secretary shall coordinate with the Secretary of Health and Human Services to ensure that the activity is carried out.

''(5) NOTIFICATION TO SCHOOLS AND VENDORS.—

''(A) PROVISION OF VENDOR CONTACT INFORMATION TO STATE EDUCATIONAL AGENCY.—Not later than August 1, 2004, and as appropriate thereafter, a school that participates in the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall provide to the appropriate State educational agency current contact information for each vendor, and each school food supplier of the vendor, that will provide food products to be served by the school.

''(B) NOTIFICATION BY STATE EDUCATIONAL AGENCIES.—

''(i) IN GENERAL.—A State educational agency that receives notification under paragraph (2)(C) or (3)(A)(iii) with respect to a food product shall, within 24 hours after receipt of the notification, notify each vendor and each school to which the food product was, or may have been, distributed.

''(ii) CONTENTS OF NOTIFICATION.—The notification shall include—

''(I) the finding of the Secretary under paragraph (2); and

''(II) sufficient information to identify the affected food product.

''(C) ACTION BY VENDORS ON RECEIPT OF NOTIFICATION.—Each vendor that receives notification under paragraph (2)(C), paragraph (3)(A)(iii), or subparagraph (B) shall—

''(i) immediately cease distribution of the food product; and

''(ii) isolate the affected product to avoid accidental distribution.

''(D) ACTION BY SCHOOLS ON RECEIPT OF NOTIFICATION.—Each school that receives notification under paragraph (2)(C), paragraph (3)(A)(iii)), or subparagraph (B) shall—

''(i) immediately cease serving the food product; and

''(ii) isolate the affected product to avoid accidental use.

''(6) NOTIFICATION TO THE PUBLIC.—

''(A) IN GENERAL.—If a State educational agency finds that a food product subject to a Class I recall has been consumed under a program operated by a school under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the State educational agency shall provide public notification in accordance with subparagraph (B).

''(B) CONTENTS OF NOTIFICATION.—The notification shall include—

''(i) the finding of the Secretary under paragraph (2); and

''(ii) sufficient information to identify the recalled food product and the date when and location where the recalled food product was served.

''(7) ENFORCEMENT.—

''(A) IN GENERAL.—A violation of this subsection may be prosecuted, as applicable—

''(i) by the Secretary under—

''(I) section 12 of the Poultry Products Inspection Act (21 U.S.C. 461);

''(II) section 406 of the Federal Meat Inspection Act (21 U.S.C. 676); or

''(III) section 12 of the Egg Products Inspection Act (21 U.S.C. 1041); or

''(ii) by the Secretary of Health and Human Services under section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333).

''(B) NO EFFECT ON STATE PROSECUTIONS.—Nothing in this paragraph prevents a State from prosecuting any violation of State law.

''(n) INFORMATION SHARING ON FOOD SAFETY LAW COMPLIANCE.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Health and Human Services, shall establish an advisory committee (referred to in this subsection as the 'Committee') to assist in establishing an information-sharing database, or implementing another method, to provide each State food safety coordinator designated under section 12(q) and other appropriate persons with up-to-date information regarding food safety concerns relating to food manufacturing, processing, and packing facilities that produce any food purchased or acquired for a program under this Act or the

school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), including recalls by and enforcement actions against the facilities.

''(2) COMPOSITION.—The Committee shall include representatives of—

''(A) school food authorities;

''(B) State educational agencies;

''(C) State agricultural agencies;

''(D) consumer groups;

''(E) State public health officials; and

''(F) food manufacturing, processing, and packing facilities.

''(3) COMPENSATION.—

''(A) IN GENERAL.—Subject to subparagraph (B), a member of the Committee shall not receive any compensation for the service of the member on the Committee.

''(B) TRAVEL EXPENSES.—A member of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of services for the Committee.

''(4) TECHNICAL ASSISTANCE.—The Secretary shall provide for the availability to each State food safety coordinator of training and technical assistance on use of any database or method described in paragraph (1).

''(5) REPORT.—Not later than May 31, 2004, the Committee shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing actions taken to carry out this subsection.

''(6) FUNDING.—Section 715 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2003 (Public Law 108–7), and any successor section, shall not apply to expenses of the Committee.''.

SEC. 4. DESIGNATION OF STATE FOOD SAFETY COORDINATORS.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end the following:

''(q) DESIGNATION OF STATE FOOD SAFETY COORDINATORS.—Each State educational agency shall designate an individual to serve as the State food safety coordinator to ensure within the State the safety of food served under a program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).''.

SEC. 5. PROCEDURES AND ACTIONS TO ENSURE THE SAFETY OF DONATED COMMODITIES.

Section 14 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a) is amended—

(1) in the first sentence of subsection (d)—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(6) require, at a minimum, for any commodity that is used under a program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773)—

''(A) daily inspection under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) of any donated commodity that is covered by—

''(i) the Poultry Products Inspection Act (21 U.S.C. 451 et seq.);

''(ii) the Federal Meat Inspection Act (21 U.S.C. 601 et seq.); or

''(iii) the Egg Products Inspection Act (21 U.S.C. 1031 et seq.);

''(B) daily inspection of any seafood commodity that is covered by the inspection program carried out by the National Marine Fisheries Service under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.); and

''(C) quarterly, on-site audits under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) of each establishment that produces a donated fresh or processed fruit or vegetable.'';

(2) by redesignating subsection (g) as subsection (h); and

(3) by inserting after subsection (f) the following:

''(g) ACTIONS TO ENSURE THE SAFETY OF DONATED COMMODITIES.—With respect to commodities purchased by the Secretary for a program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the Secretary shall—

''(1) in the case of ground uncooked meat products—

''(A) collect samples at least 4 times per day during production; and

''(B) conduct at least daily composite testing for compliance with the microbiological limits established by the Secretary on—

''(i) Escherichia coli (E. coli) O157:H7 in effect on October 1, 2002; and

''(ii) Salmonella in effect on October 1, 2002, unless the Secretary develops a more appropriate scientific and health-based standard;

''(2)(A) collect and test samples at least 4 times per day during production from food contact surfaces of ready-to-eat meat and poultry product plants; and

''(B) if the result of a test under subparagraph (A) is positive for Listeria spp., conduct product sampling for compliance with the microbiological limit on Listeria monocytogenes issued by the Secretary on May 23, 1989 (54 Fed. Reg. 22345); and

''(3) reject any lot of food products that fails to meet the requirements of paragraph (1) or paragraph (2), as applicable.''.

By Ms. SNOWE (for herself, Mrs. FEINSTEIN, Mr. MCCAIN, Mr. KERRY, Mr. SMITH, and Mr. REID):

S. 507. A bill to amend the Internal Revenue Code of 1986 to provide incentives to introduce new technologies to reduce energy consumption in buildings; to the Committee on Finance.

Ms. SNOWE. Madam President, I rise today to introduce the EFFECT Act, the Energy Efficiency through Certified Technologies Act, which has bipartisan support as I am pleased to be joined by cosponsors Senator FEINSTEIN of California, Senator MCCAIN of Arizona, Senator KERRY of Massachusetts, Senator GORDON SMITH of Oregon, and Senator REID of Nevada.

As a member of the Finance Committee, I strongly believe that we must develop responsible tax credit incentive policies that will increase the efficiencies of the homes we build and live in and the buildings in which we work. We did an admirable job last year providing sound tax incentives in the omnibus energy bill, and it is regrettable that bill did not get out of conference and these incentives are not available for our consumers to use. That is especially true as the storm clouds gather in the Middle East and the price of oil, for instance, reaches $40 a barrel.

This bill provides tax incentives for advanced levels of energy efficiency and peak power saving technologies in the buildings in which we live, work, and learn. Buildings consume some 35 percent of energy nationwide and are responsible for the emissions of a comparable percentage of pollution; importantly, they account for more than one-half of the Nation's energy costs.

Incentives provided through the tax system are necessary to complement existing energy efficiency policies at the Federal and State levels. The issue is, incentive programs already being operated cannot provide multiyear commitments of money. Such commitments are absolutely vital in inducing industries to invest in these technologies. The 1-year commitments that are offered by many current programs are insufficient to promote dramatic new energy efficiency technologies even when they are very cost effective.

Our goal in introducing the legislation is to accelerate the commercial success of technologies that are already cost effective but are currently impeded by market barriers. These barriers can be overcome by financial incentives. Savings of up to 50 percent add up to reductions in climate pollution emissions of 65 million metric tons of carbon annually after 10 years, accompanied by consumer energy bill reductions of $30 billion per year and the creation of almost 500,000 new jobs as well as stimulation in the growth of small businesses.

The bill provides for a 6-year—and, in some cases, 3-year—sunset for the incentive. Incentives are provided for commercial buildings both new and remodeled, including schools and other public buildings and rental housing; for air-conditioning, heating, and water heating equipment which can reduce peak power demand quickly; for new homes and the retrofitting of existing homes; and for solar electricity.

The incentives provided for in this legislation are based on three principles: One, independent third-party certification is required so that energy savings are certified and the Government is getting real energy savings for the tax money invested; two, the incentives are workable, not bureaucratic, and are built on programs that have already been shown to work with minimal bureaucratic intervention or effort; and, three, the incentives sunset in order to provide a transition to a market system that already promotes energy efficiency.

The incentives are performance-based so that the consumer and producer have the motivation to reduce costs and to introduce new technologies to achieve energy goals in more cost-effective ways than existing technologies. The documentation required for certification has value in the marketplace in allowing property markets to reflect enhanced property values based on energy efficiency.

Many American homes, for instance, were built years before energy-efficient technologies were developed. This is certainly true in an older State such as

my home State of Maine and an incentive for a retrofit such as simply putting in certifiable high-energy-efficient doors and windows, such a low-emissivity glass, will save a great deal of energy loss because of the huge amount of seepage that now occurs through the existing windows.

This bill will also leverage cost-effective investments in saving peak powers as well as energy—110,000 megawatts after 10 years. It is one of the few public policies that can be enacted that can help avert peak power shortages in the next 4 or 5 years. It will lower energy costs for consumers and businesses and promote competition and innovation.

The bottom line is, we have the opportunity to raise the bar for our future domestic energy systems. Solutions exist in available technologies, and most of all in the entrepreneurial spirit of the American people. I look forward to working with the chairmen of the Finance Committee, as I did last year, to mark up tax incentives that reflect the provisions of this legislation, and with the Energy Committee chairmen to further our Nation's energy efficiency goals that will save on our energy usage—and this will be reflected in the energy bills consumers must pay—and thus allow us to use less electricity, and less oil and natural gas to produce that energy.

I am pleased to be joined by Senators representing States throughout the country and urge others to seriously consider this legislation and join us in working towards our goal for achieving greater energy efficiency in the near future.

Mrs. FEINSTEIN. Madam President, I rise in support of the Efficient Energy through Certified Technologies Act which I have cosponsored along with Senator OLYMPIA SNOWE of Maine.

The EFFECT Act will provide tax incentives to encourage homeowners and businesses to improve the energy efficiency of their buildings and equipment. This legislation will stimulate the economy, cut energy bills, reduce energy usage, and reduce pollution.

This bill was originally introduced in the 107th Congress to address the Western energy crisis which, as we all know, created exorbitantly high prices for power and rolling blackouts. This legislation incorporates improvements based on last year's Senate energy tax bill.

While conditions in the West have improved because there are more plants coming online and families and businesses have reduced their energy usage, it is important to take steps to continue to increase our energy efficiency and reduce energy consumption.

Simply put, there are only two things one can do when there is not enough power to go around: increase supply or decrease demand.

Without a doubt, the quickest way to address future demand and supply imbalances is to provide incentives to increase energy efficiency to reduce demand.

This bill creates economic incentives for Americans to increase energy efficiency by establishing the following tax deductions and tax credits for commercial and residential properties using specific energy efficient technologies:

A tax deduction of $2.25 per square foot for newly constructed or remodeled commercial buildings, including schools and other public buildings as well as rental housing, that achieve a 50-percent reduction in total annual energy costs, compared to existing national standards.

A $2,000 tax credit to builders of new homes that use 50 percent less energy than a national model standard.

A performance-based tax credit of as much as $6,000 for installing solar technology.

A tax credit of as much as $300 if businesses install a super-efficient, new electric heat pump, a new central air-conditioner, or a new gas or electric water heater.

A tax credit of as much as $500 if homeowners, tenants, or landlords retrofit their homes to achieve a 30 percent or 50 percent reduction in annual energy costs.

The benefits of increasing energy efficiency are immense.

First, increasing energy efficiency will cut heating, cooling, and electricity costs. Homeowners and businesses spend over $250 billion each year on heat, air-conditioning, and related energy costs for their businesses and homes. If we can reduce energy costs by increasing energy efficiency, money will be freed to fuel the economy in other areas and create new jobs. Furthermore, increasing energy efficiency will reduce the impact of future energy price spikes that harm families and businesses. And the incentives will cause businesses to invest in producing more efficient equipment and services beginning immediately after the bill is enacted.

Second, increasing energy efficiency will reduce air pollution. Energy generation to heat, cool, and light our homes and offices produces 35 percent of the air pollution emitted nationwide. If we increase efficiency, then less energy will be needed to power our buildings, and consequently, we will be able to reduce emissions from powerplants.

Third, increasing energy efficiency will help maintain the reliability of our Nation's electricity supply. Since most of our peak electricity demand comes from heating, cooling, or lighting needs, increasing energy efficiency will lower the probability of blackouts or brownouts.

In fact, with this legislation in place, peak electricity demand in the summer would be reduced by tens of thousands of negawatts nationwide after a decade—or the equivalent output produced by hundreds of large powerplants.

This could result in over 10,000 MW of savings over the summer just in our State and much more on the Western grid that California shares with neighboring States.

Meanwhile, this legislation will also create a market for firms to develop more energy-efficient products, such as air-conditioners, heat pumps, lighting equipment, windows, insulation, water heaters, and solar panels.

Just think how conditions could have improved in California during the Western energy crisis if we had been able to reduce our energy consumption instead of purchasing power at exorbitant rates from out-of-State suppliers.

According to the Department of Energy, California is already one of the most energy-efficient States in the Nation—ranking fourth in overall energy efficiency and second in electricity efficiency.

Nevertheless, Californians responded to the crisis and further increased their energy efficiency. This legislation will take energy efficiency to the next level and create the opportunity for all families and businesses nationwide to make energy efficient improvements.

Instead of waiting for the next energy emergency to occur, we should take steps now to reduce energy consumption across the board.

The bill introduced in the 107th Congress had the support of California Governor Gray Davis, the California Energy Commission, the Sacramento Municipal Utility District, the Natural Resources Defense Council, Union of Concerned Scientists, the California Building Industry Association, most California utilities and many other organizations and businesses. We expect similar widespread support for the bill we are reintroducing today.

This bill is an important step to help reduce demand. It provides financial incentives to offset some of the costs of building new energy-efficient buildings and homes, and improving existing structures to make them more energy efficient.

I urge my colleagues to support this important legislation.

By Mrs. FEINSTEIN (for herself, Mr. FITZGERALD, Mr. LUGAR, Mr. HARKIN, Ms. CANTWELL, Mr. WYDEN, and Mr. LEAHY):

S. 509. A bill to modify the authority of the Federal Energy Regulatory Commission to conduct investigations, to increase the penalties for violations of the Federal Power Act and Natural Gas Act, to authorize the Chairman of the Federal Energy Regulatory Commission to contract for consultant services, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mrs. FEINSTEIN. Madam President, yesterday the State of California submitted a filing to the Federal Energy Regulatory Commission which provides a wholesale indictment of energy companies and shows how a number of energy firms engaged in deceptive trading practices to drive up prices in the Western Energy Market. I have called on FERC to make this evidence public

and I want to reiterate my request again.

I am also introducing a bill with Senators FITZGERALD, HARKIN, LUGAR, CANTWELL, WYDEN, and LEAHY to close a loophole which allows energy trades to take place electronically, in private, with no transparency, record, audit trail or any oversight to guard against fraud and manipulation.

But before I reintroduce this bill, I want to reiterate the important revelations that have been uncovered in the past year and detail what we know about yesterday's filing at FERC.

Last week I came to the floor to update the Senate on recent evidence of fraud and manipulation in the energy sector. Today I want to pick up where I left off and introduce the Energy Market Oversight Act.

Mr. President, I draw my colleagues' attention to a filing made at FERC. This ''Public Version'' is a 27-page summary of the filing with confidential information removed, but it provides a detailed overview of the fraud and manipulation carried out by energy companies during the Western energy crisis.

In addition to testimony by expert witnesses, 348 exhibits, transcripts of depositions, tapes of trader telephone conversations, emails, and other data, the California parties submitted a 161-page brief to FERC. The document I have inserted into the RECORD includes the Table of Contents, the Introduction and Overview, and the Conclusion of this 161-page document. To be clear, it is part, but not all of the brief filed by the State of California.

Mr. President, the filing submitted by the State of California yesterday shows that there was an extensive and coordinated attempt by energy companies to engage in the following schemes to drive up prices in the Western Energy Market:

1. Withholding of Power—driving up prices by creating false shortages;

2. Bidding to Exercise Market Power—suppliers bid higher after the California ISO declared emergencies, knowing the State would need power and be willing to pay any price to get it;

3. Scheduling of Bogus Load, aka ''Fat Boy'' or ''Inc-ing''—suppliers submitted false load schedules to increase prices;

4. Export-Import Games, aka ''Ricochet or ''Megawatt Laundering''—suppliers exported power out of California and imported it back into the State in an attempt to sell power at inflated prices;

5. Congestion Games, aka ''Death Star''—suppliers created false congestion and were then paid for relieving congestion without moving any power;

6. Double-Selling—suppliers sold reserves, but then failed to keep those reserves available for the ISO;

7. Selling of Non-Existent Ancillary Services, aka ''Get Shorty''—suppliers sold resources that were either already committed to other sales or incapable of being provided;

8. Sharing of Non-Public Generation Outage Information—the largest suppliers in California shared information from a company called Industrial Information Resources that provided sellers detailed, non-public information on daily plant outages;

9. Collusion Among Sellers—sellers were jointly implementing or facilitating Enron-type trading strategies;

10. Manipulation of the Nitrous Oxide (NO_X) Emission Market—sellers manipulated the market for NO_X emissions in the South Coast Air Quality Management District through a series of wash trades that created the appearance of a dramatic price increase that may have been fabricated. For example, Dynegy, together with AES and others, entered into a series of trades of NO^x credits in July and August of 2000 by which Dynegy would sell a large quality of credits and then simultaneously buy back a smaller quantity of credits at a higher per credit price.

We can assume that the thousands of pages filed by the California parties at FERC detail these examples of market abuse. At this point we cannot know all of the instances because the specifics remain confidential, but we have plenty to go on.

Yesterday I wrote another letter to FERC Chairman Pat Wood asking the Commission to lift its ''Protective Order'' to make this information public so that families and businesses harmed during the Western Energy Crisis can know the extent of fraud and manipulation that occurred.

I believe the filing yesterday presents a key decision for FERC. Clearly the Commission cannot ignore this mountain of new evidence submitted—especially since it comes at a time when other disclosures have been made to show pervasive fraud and manipulation in the Western Energy Market.

Last month Jeffrey Richter, the former head of Enron's Short-Term California energy trading desk, pled guilty to conspiracy to commit fraud as part of Enron's well known schemes to manipulate Western energy markets. Richter's plea follows that of head Enron trader Tim Belden in the fall of 2002. Belden admitted that he schemed to defraud California during the Western energy crisis and also plead guilty to conspiracy to commit wire fraud.

The Enron plea came on the heels of FERC's release of transcripts from Reliant Energy that reveal how their traders intentionally withheld power from the California market in an attempt to increase prices. This is one of the most egregious examples of manipulation and it is clear and convincing evidence of coordinated schemes to defraud consumers.

Let me read just one part of the transcript to demonstrate the greed behind the market abuse by Reliant and its traders.

On June 20, 2000 two Reliant employees had the following conversation that reveals the company withheld power from the California market to drive prices up:

Reliant Operations Manager 1: ''I don't necessarily foresee those units being run the remainder of this week. In fact you will probably see, in fact I know, tomorrow we have all the units at Coolwater off.'' (The Coolwater plant is a 526 Megawatt plant.)

Reliant Plant Operator 2: ''Really?''

Reliant Operations Manager 1: ''Potentially. Even number four. More due to some market manipulation attempts on our part. And so, on number four it probably wouldn't last long. It would probably be back on the next day, if not the day after that. Trying to uh . . .''

Reliant Plant Operator 2: ''Trying to shorten supply, uh? That way the price on demand goes up.''

Reliant Operations Manager 1: ''Well, we'll see.''

Reliant Plant Operator 2: ''I can understand. That's cool.''

Reliant Operations Manager 1: ''We've got some term positions that, you know, that would benefit.''

Six months after this incident, as the Senate Energy Committee was attempting to get to the bottom of why energy prices were soaring in the West, the President and CEO of Reliant testified before Congress that the State of California ''has focused on an inaccurate perception of market manipulation.''

Reliant's President and CEO went on to say, ''We are proud of our contributions to keep generation running to try to meet the demand for power in California. Reliant Energy's plant and technical staffs have worked hard to maximize the performance of our generation.''

These transcripts prove otherwise and reveal the truth about market manipulation in the energy sector.

Despite this clear and convincing evidence of fraud, on January 31 of this year, the Federal Energy Regulatory Commission chose to only give Reliant a slap on the wrist for this behavior. The company paid only $13.8 million to sweep this criminal behavior under the rug and settle with FERC.

Let me turn to some other recent examples that demonstrate how other energy companies manipulated the Western Energy Market as Reliant did. On December 11th, FERC finally released audio tapes that show how traders at Williams conspired with AES Energy plant operators to keep power offline and drive prices up.

The tapes depict how on April 27, 2000, Williams outage coordinator Rhonda Morgan encouraged an AES operator at the company's Alamitos plant to extend a plant outage because the California grid operator was paying ''a premium'' for power at the time. The Williams employee stated, ''that's one reason it wouldn't hurt Williams' feelings if the outage ran long.''

Later that day, Eric Pendergraft, a high-ranking AES employee called to confirm with Ms. Morgan that Williams wanted the plant to stay offline by saying, ''you guys were saying that it might not be such a bad thing if it took us a little while longer to do our work?'' ''I don't want to do something underhanded,'' Ms. Morgan responded, ''but if there is work you can continue to do . . .'' At this point Mr. Pendergraft interrupted to cut off their suspicious conversation, saying, ''I understand. You don't have to talk anymore.''

Clearly, this is evidence of a calculated intent to withhold power to raise prices. I find it unconscionable.

Let's turn to some other examples.

On January 27, 2003, Michelle Marie Valencia, a 32-year-old former senior energy trader for Dynegy was arrested on charges that she reported fictitious natural gas transactions to an industry publication.

On December 5, 2002, Todd Geiger, a former vice president on the Canadian natural gas trading desk for El Paso Merchant Energy, was charged with wire fraud and filing a false report after allegedly telling a trade publication about the prices for 48 natural gas trades that he never made in an effort to boost prices and company profit.

These indictments are just the latest examples of how energy firms reported inaccurate prices to trade publications to drive energy prices higher.

Industry publications claimed they could not be fooled by false prices because deviant prices are rejected, but this claim was predicated on the fact that everyone was reporting honestly—which we now know they weren't doing.

CMS Energy, Williams, American Electric Power Company, and Dynegy have each acknowledged that its employees gave inaccurate price data to industry participants. On December 19th Dynegy agreed to pay a $5 million fine for its actions.

In September an Administrative Law Judge at FERC issued a landmark ruling concluding that El Paso Corporation withheld natural gas from California and recommended penalty proceedings against the company. Since the El Paso Pipeline carries most of the natural gas to Southern California, this ruling has tremendous implications. The FERC Commissioners are expected to take up this case for a final judgement soon.

These have been the latest revelations in a series of energy disclosure bombshells that began on Monday, May 6th when the Federal Energy Regulatory Commission posted a series of documents on their website that revealed Enron manipulated the Western Energy Market by engaging in a number of suspect trading strategies.

These memos revealed for the first time how Enron used schemes called ''Death Star,'' ''Get Shorty,'' ''Fat Boy,'' and ''Ricochet'' to fleece families and businesses in the West.

The filing made yesterday to FERC shows how other companies did engage in these Enron-type trading strategies. The brief submitted by the State of California and others states that suppliers ''were jointly implementing or facilitating Enron-type trading strategies.''

Let us turn to other types of fraudulent trades that many energy firms have admitted to.

Dynegy, Duke Energy, El Paso, Reliant Resources Inc., CMS Energy Corp., and Williams Cos. all admitted engaging in false ''round-trip '' or ''wash trades.''

What is a ''round-trip'' trade, one might ask?

''Round-trip'' trades occur when one firm sells energy to another and then the second firm simultaneously sells the same amount of energy back to the first company at exactly the same price. No commodity ever actually changes hands, but when done on an exchange, these transactions send a price signal to the market and they artificially boost revenue for the company.

How widespread are ''round-trip'' trades? Well, the Congressional Research Service looked at trading patterns in the energy sector over the last few years and reported, ''this pattern of trading suggests a market environment in which a significant volume of fictitious trading could have taken place.''

Yet, since most of the energy trading market is unregulated by the government, we have only a slim idea of the illusions being perpetrated in the energy sector.

Consider the following recent confessions from energy firms about ''round-trip'' trades:

Reliant admitted 10 percent of its trading revenues came from ''round-trip'' trades. The announcement forced the company's President and head of wholesale trading to both step down.

CMS Energy announced 80 percent of its trades in 2001 were ''round-trip'' trades.

Remember, these trades are sham deals where nothing was exchanged, yet the company booked revenues from the trades.

Duke Energy disclosed that 1.1 billion dollars-worth of trades were ''round-trip'' since 1999—roughly two-thirds of these were done on InterContinental Exchange, which means that thousands of subscribes would have seen these false price signals.

A lawyer for J.P. Morgan Chase admitted the bank engineered a series of ''round-trip'' trades with Enron.

Dynegy and Williams have also admitted to this round-trip trading.

And although these trades mostly occurred with electricity, there is evidence to suggest that ''round-trip'' trades were made in natural gas and even broadband.

By exchanging the same amount of a commodity at the same price, I believe these companies have not engaged in meaningful transactions, but deceptive practices to fool investors and possibly drive energy prices up for consumers.

It is therefore imperative that the Department of Justice, FERC, the SEC, the Commodities Futures Trading Commission and every other oversight agency conduct an aggressive and vigorous investigation into all of the energy companies who participated in Western Energy Market.

Beyond that I believe Congress must re-examine what tools the government needs to keep a better watch over these volatile markets that are little understood. In the absence of vigilant government oversight of the energy sector, firms have the incentive to create the appearance of a mature, liquid, and well-functioning market, but it is unclear whether such a market exists.

The ''round-trip'' trades, the Enron memos, and the filing at FERC raise questions about illusions in the energy market.

To this end, I believe it is critical for the Senate to act soon on the legislation I offered last April to regulate online energy trading.

I am re-introducing this legislation to subject electronic exchanges like Enron On-Line to the same oversight, reporting and capital requirements as other commodity exchanges like the Chicago Mercantile Exchange, the New York Mercantile Exchange and the Chicago Board of Trade.

I am pleased Senator FITZGERALD, Senator HARKIN, Senator LUGAR, Senator CANTWELL, Senator WYDEN, and Senator LEAHY have again signed on to this legislation. I am proud of the work we did in the 107th Congress and I hope we can complete action on this bill soon.

Without this type of legislation, there is insufficient authority to investigate and prevent fraud and price manipulation since parties making the trade are not required to keep a record.

Right now, energy transactions are regulated by the Federal Energy Regulatory Commission (FERC) when there is actual delivery.

For example, if I buy natural gas from you, and you deliver that natural gas to me, FERC has the authority to ensure that this transaction is transparent and reasonably priced.

However, many energy transactions no longer result in delivery. A giant loophole has opened where there is no government oversight when these transactions are done on internet exchanges.

In 2000, Congress passed the Commodity Futures Modernization Act in 2000 which exempted energy and metals trading from regulatory oversight and excluded it completely if the trade was done electronically.

So today, as long as there is no delivery, there is no price transparency. Again, this lack of transparency and oversight only applies to energy. It does not apply if you are selling wheat or pork bellies or any other tangible commodity.

And it did not take long for Enron Online, and others in the energy sector, to take advantage of this new freedom by trading energy derivatives absent any regulatory oversight.

Thus, after the 2000 legislation was enacted, Enron OnLine began to trade energy derivatives bilaterally without being subject to proper regulatory oversight. It should not surprise anyone that without the transparency, prices soared.

Just yesterday Warren Buffett published a warning in Fortune Magazine saying that ''Derivatives are financial weapons of mass destruction.'' In his annual warning letter to shareholders about what worries him about the financial markets, Warren Buffett called derivatives and the trading activities that go with them ''time bombs.''

In the letter, Warren Buffett states, ''In recent years some huge-scale frauds and near-frauds have been facilitated by derivatives trades. In the energy and electric utility sectors, for example, companies used derivatives and

trading activities to report great 'earnings'—until the roof fell in when they actually tried to convert the derivatives-related receivables on their balance sheets into cash.''

We clearly saw this with Enron.

Was Enron and its energy derivative trading arm, Enron-On-Line the sole reason California and the West had an energy crisis? No.

Was it a contributing factor to the crisis? I certainly believe that it was. Unfortunately, because of the energy exemptions in the 2000 CFMA, which took away the CFTC's authority to investigate, we may never know for sure.

In the 107th Congress, this legislation was debated during consideration of the Senate Energy Bill and it was the subject of a hearing in the Agriculture Committee, but time ran out before the legislation could be marked up and passed.

Since that time, Senators LUGAR and HARKIN have made significant improvements to the legislation and we have added stronger penalties for market abuse and wrongdoing.

Today I am pleased to note that the following companies and organizations are supporting this legislation:

The National Rural Electric Cooperative Association,
The Derivatives Study Center,
The American Public Gas Association,
The American Public Power Association,
The California Municipal Utilities Association,
The Southern California Public Power Authority,
The Transmission Access Policy Study Group,
The U.S. Public Interest Research Group,
The Consumers Union,
The Consumers Federation of America,
Calpine,
Southern California Edison,
Pacific Gas and Electric, and
FERC Chairman Pat Wood.

I ask unanimous consent that the letters of support from these organizations and companies be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FEDERAL ENERGY
REGULATORY COMMISSION,
Washington, DC, February 21, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: Thank you for bringing to my attention your proposed legislation on, inter alia, the penalty provisions in the Federal Power Act (FPA) and the Natural Gas Act (NGA), refund provisions in the FPA, and federal oversight of financial transactions involving energy commodities. Your amendment would expand the penalties allowed under the FPA and NGA, and also allow oversight by the Commodity Futures Trading Commission (CFTC) of financial transactions involving energy commodities.

I support your proposed changes to the FPA and NGA. Increased penalty authority will help ensure compliance with the requirements of these statutes. Also, your proposed changes to the FPA refund provisions will allow greater protection of utility customers.

Finally, you know how strongly I feel about customers having access to the broadest range of useful market information. Greater transparency is needed in energy markets. Thus, I support providing for, or clarifying, CFTC or other Federal regulatory oversight of trading platforms that are relied on for price discovery. However, the details of your proposed changes to the Commodity Exchange Act would be better addressed by the CFTC or others and I would defer to them with respect to any changes to the Commodity Exchange Act.

Best regards,

PAT WOOD III,
Chairman.

PG&E CORPORATION,
San Francisco, CA, January 8, 2003.

Hon. THAD COCHRAN,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR COCHRAN: Congratulations on your assumption of the Chairmanship of the Agriculture, Nutrition, and Forestry Committee. We are writing to communicate our support for an important bipartisan legislative proposal considered by the Committee last year to provide oversight of energy derivatives trading markets.

As you know, the Committee considered last summer a proposal introduced by Senator Feinstein and co-sponsored by Senators Harkin and Lugar, S. 2724, to repeal the current exemption of energy derivatives trading from the jurisdiction of the Commodity Futures Trading Commission (''CFTC''). The proposal was similar to legislation offered earlier in the year by Senator Feinstein as an amendment to the Senate Energy Bill. Enclosed for your information is a letter that was sent from our corporation to Senator Feinstein last year concerning her amendment.

The legislation, which we hope Congress will consider again this year, would re-establish authority over energy derivatives trading to the CFTC, which has the most relevant oversight capability, having regulated such trading prior to 2000. As a market participant, we believe that Senator Feinstein's legislation will encourage transparency of market information and ensure market stability, which in turn would enable market participants to better manage risk, reduce price volatility for electricity consumers and preserve ultimately the viability of this marketplace.

We appreciate your considering our views on this important issue, and look forward to working with you in the 108th Congress.

Sincerely,

DAN RICHARD,
Senior Vice President, Public Affairs.

CALPINE,
San Jose, CA, February 5, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing to let you know of Calpine's continuing support for additional oversight of certain energy derivative markets, as intended by the legislation you plan to introduce again this year. While we do not believe that energy trading was a primary cause of the California energy crisis, we do believe there is a crisis of confidence in the energy markets and that your legislation will assist in restoring much needed public confidence in the energy sector.

Specifically, we support the bill's strengthening of the CFTC's anti-fraud and anti-manipulation authority and its provision for increased cooperation and liaison between the CFTC and the FERC. We are also pleased that your legislation addresses concerns about the oversight and transparency of electronic trading platforms. It is important that such facilities, which play a significant price discovery role in the energy trading markets, be subject to appropriate reporting and oversight by the CFTC.

However, I also understand that typical over the counter bilateral trading operations, such as those that operate from a trading desk where various potential counterparties are separately contacted by phone or email, are not intended to be treated as electronic trading facilities under your bill. This is an important distinction and one that may need further clarification as the bill proceeds through the legislative process.

Calpine would like to thank you for your leadership in advocating reasonable measures to ensure the integrity of important energy trading markets and we stand ready to provide you with any information or assistance that you may need.

Sincerely,

JOSEPH E. RONAN, Jr.,
Senior Vice President,
Government and Regulatory Affairs.

EDISON INTERNATIONAL,
Rosemead, CA, February 4, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: Thank you for asking Edison International for our views on your Exempt Commodities Transactions Act, soon to be reintroduced in the 108th Congress. As you know, Edison shares your concern over manipulation of the California electricity market by some market participants, which contributed to the serious problems the state faced from out-of-control energy prices. Your legislation would provide transparency in the electricity derivatives trading market, an industry that is currently exempted from regulation under the Commodity Futures Modernization Act of 2000 (CFMA).

I support your legislation, with a suggestion for your consideration to further refine it. Our company and others use energy derivatives trading to protect and hedge the revenue from our power plants. This is in contrast to companies that conduct middleman financial trading with no or few power plants and trade to make money on financial arbitrage. There should be guidance in the final language which recognizes the difference between these two types of businesses, particularly regarding further capital requirements. Otherwise companies that trade in order to hedge physical assets may be required to pay twice—once in order to obtain capital for the assets and a second time in order to meet any capital requirements to back their trades.

Thank you again for your efforts on behalf of California consumers and businesses.

Sincerely,

JOHN E. BRYSON,
Chairman, President and
Chief Executive Officer.

AMERICAN PUBLIC GAS ASSOCIATION,
Fairfax, VA, January 22, 2003.

Re amending the Commodities Exchange Act.

Hon. DIANNE FEINSTEIN,
Hart Senate Office Building, U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: The American Public Gas Association (APGA) is very pleased that you and Senator Lugar have again taken the lead to amend the Commodity Exchange Act (CEA). The provisions you propose, which amend the CEA, are significant steps towards ensuring that natural gas prices are determined in a competitive and informed marketplace. We applaud your efforts to undo special exclusions and exemptions granted in the closing hours of the

106th Congress, especially when those exclusions and exemptions were specifically rejected by the Senate Agriculture Committee.

The Commodity Futures Trading Commission (CFTC) plays a front-line role in promoting a competitive natural gas marketplace. Closing the gaps that impede effective federal oversight of the natural gas marketplace is essential in order to foster competitive commodity futures markets and protect market users and the public from fraud, manipulation, and abusive practices. APGA fully supports your provisions to clarify and restore the CFTC's ability to monitor activity in off-exchange, or over-the-counter (OTC), derivatives markets that trade substantial volumes of natural gas derivatives. Your limited and measured steps ensure a fair balance between free market activities and the necessary protections from bad conduct, which undermines the confidence and integrity of market participants and consumers.

Eliminating those special exclusions and exemptions, which were already rejected three years ago in the committee of jurisdiction, will help the CFTC meet its obligation to make sure that no important trading activities fall between the cracks leaving some energy markets without a federal agency with oversight authority. The consumers served by public gas utilities across the country will benefit from your efforts because they are less likely to be victimized by activities that occur in a market where the CFTC exercises oversight.

Again, public gas utilities and the hundreds of communities that we serve commend you for your thoughtful and deliberate leadership on this very important issue. While there may be some who will oppose this amendment, one need not look far to see whether the opposition is looking out for the best interests of Wall Street or Main Street. We pledge to work with you in any way we can to pass this much-needed amendment. Please let me know how I can assist you.

Sincerely,

BOB CAVE,
President.

AMERICAN PUBLIC POWER ASSOCIATION,
Washington, DC, March 4, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the American Public Power Association (APPA), I want to express support for the intent and thrust of your legislation entitled the ''Energy Market Oversight Act'' and to commend you for your leadership in addressing these important consumer protection issues.

APPA represents the interests of more than 2,000 publicly owned electric utility systems across the country, serving approximately 40 million citizens. APPA member utilities include state public power agencies and municipal electric utilities that serve some of the nation's largest cities. However, the vast majority of these publicly owned electric utilities serve small and medium-sized communities in 49 states, all but Hawaii. In fact, 75 percent of our members are located in cities with populations of 10,000 people or less.

It is my understanding that your legislation would provide the Commodity Futures Trading Commission (CFTC) with jurisdiction over trading in energy derivatives and other financial products. APPA is particularly supportive of language in your bill that would increase the Federal Energy Regulatory Commission's (FERC) ability to investigate market manipulation and penalize such behavior.

Some of APPA's members may have concerns regarding the impact the bill may have on public power, and I look forward to working with you and your staff in an effort to resolve these concerns. I would also like to join the California Municipal Utilities Association (CMUA) in raising an issue that I believe is consistent with the intent of your bill. CMUA has attempted to get the California ISO to do a benchmarking study comparing their costs to other ISOs throughout the United States. The California ISO has informed CMUA that they cannot conduct such a study because they cannot get the information from other ISOs. To address this problem, while keeping with your bill's goal of increasing transparency, I would use you to add a provision to the bill that would require FERC to gather such information as is necessary from each ISO to compare their cost of services on an annual basis.

APPA looks forward to working with you and your staff on this legislation and other issues in the 108th Congress.

Sincerely,

ALAN H. RICHARDSON,
President and CEO.

NEW YORK MERCANTILE EXCHANGE,
New York, NY.

Senator DIANNE FEINSTEIN,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: As a result of concerns surrounding the Enron bankruptcy, numerous congressional committees, regulators, and financial institutions are closely examining the broad impact of the collapse on American markets, investors and employees. Much attention has been paid to corporate governance, financial and accounting standards, and market practices, with considerable focus on the energy marketplace. On behalf of the New York Mercantile Exchange, Inc. (''NYMEX'' or the ''Exchange''), we wish to applaud your efforts to bring more accountability and greater transparency to this nation's vitally important energy marketplace.

NYMEX is the world's largest forum for the trading and clearing of energy futures contracts. As a federally chartered marketplace, it is overseen by the independent federal regulatory agency, the Commodity Futures trading Commission (''CFTC''). NYMEX serves a diverse domestic and international customer base by bringing price transparency, market neutrality, competition and efficiency to energy markets, and provides businesses with the financial tools to deal with market uncertainty.

After studying your legislative proposal, we have concluded that it is very worthy of support for the following reasons:

The proposal would refine the definition of trading facility as applied to energy derivatives markets and would further require that any such market not otherwise regulated by the CFTC would be accountable to them.

In addition, the proposal would give the CFTC vitally important tools to monitor such markets, including large trader reporting and net capital standards.

The proposal would also ensure that the CFTC has the authority and ability to obtain access to information critical to market oversight and to make market information public to the extent that the Commission determines that it is in the public interest to do so.

With numerous reports of reduced confidence in market integrity in the wake of the Enron bankruptcy, never has it been more important to restore faith in the great American resource, our competitive markets. S. 517's provisions relating to addressing regulatory gaps in the CFTC regulatory ''umbrella'' can provide an important and meaningful improvement in market oversight, and is an important step in building faith and confidence in a competitive energy marketplace.

We strongly support your efforts to enhance market transparency and accountability, and we look forward to working with you in this important endeavor.

Sincerely,

VINCENT VIOLA,
Chairman.
J. ROBERT COLLINS,
President.

SOUTHERN CALIFORNIA
PUBLIC POWER AUTHORITY,
February 28, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the Southern California Public Power Authority (SCPPA), I would like to express our support for your proposed legislation, the ''Energy Market Oversight Act,'' which would provide more authority to the Federal Energy Regulatory Commission (FERC) and the Commodity Futures Trading Commission (CFTC) to oversee the trading in energy derivatives and other financial transactions and to investigate and punish market manipulation.

SCPPA is a non-profit, joint action agency formed in 1980 to represent the cities of Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles, Pasadena, Riverside, and Vernon; and the Imperial Irrigation District. The community-owned utilities that make up SCPPA's membership serve approximately five million citizens from northern Los Angeles County to the Mexican border.

We support the intent of your legislation because we believe it will enhance safeguards for consumers and foster a more fully functioning competitive market. As you are well aware, lack of effective market monitoring and market transparency combined to allow for manipulation of the markets, to the extreme detriment of California consumers. We believe that federal legislation that promotes more effective monitoring and remedies for fraud and market abuses will improve the climate for investment in new generation, increase consumer confidence, and reduce market volatility.

We are encouraged that this legislation increases the civil and criminal penalties for manipulation, allows for prompt investigatory action by FERC, and allows for an earlier refund effective date when rates are not ''just and reasonable.'' We think these actions will provide an improved regulatory deterrent, as well as a means for swift and complete refunds to consumers.

SCPPA commends you for taking a leadership role on these critical issues and looks forward to working with you to address a few issues of particular concern to our municipal utility members.

Sincerely,

BILL CARNAHAN,
SCPPA Executive Director.

NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION,
Arlington, VA, January 29, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: I would like to take this opportunity to express the appreciation of the National Rural Electric Cooperative Association for our efforts to restore transparency and integrity to the energy markets. We are pleased that you have introduced legislation with Senators Lugar, Harkin, Fitzgerald and others (the Energy Market Oversight Act) that reestablished the ability of the Commodity Futures Trading Commission to police all energy derivatives

markets for fraud and commodity price manipulation.

Today, consumers and investors have little confidence that the energy markets are operating fairly and for the benefit of all. Much blame for the current crisis in confidence can be placed on the so-called ENRON exemption, adopted in 2000, as part of the legislation that deregulated the over-the-counter derivatives market for energy commodities.

The legislation created a gap in the regulation of energy derivatives where price and trade manipulation can occur unchecked by adequate regulatory oversight. Although the Commodity Futures Trading Commission (CFTC) has authority to prosecute fraud and price manipulation that occurs on the commodity exchanges, the CFTC has no clear authority to pursue violations of the Federal anti-fraud and anti-manipulation laws in the over-the-counter energy market.

Energy derivatives contracts, whether traded on well-regulated commodities exchanges or in the over-the-counter market, play an important role in determining the costs and availability of electricity and other energy products to consumers. But, consumers suffer when much of the market for energy derivatives lacks transparency and operates without accountability for manipulation and fraud, which is the case for the over-the-counter markets.

Recent headlines underscore the need for this important legislation. The news has been filed with the indictments of energy traders for manipulation of the energy markets and admissions by energy companies that they have engaged in deceptive market practices, including wash trades on an unregulated over-the-counter exchange.

Consumer-owned electric co-ops now purchase more than 50% of their electric power on the market and are exposed to the risks that an unstable market creates. As the representative of America's 900 consumer-owned electric co-op utilities, the NRECA believes that it is vitally important to restore confidence in the energy markets by ensuring that market participants have access to reliable and credible information.

Your legislation represents an important step in creating more transparent energy markets. I want to thank you for your leadership on this critical issue and offer the support of America's electric cooperatives in this effort to restore credibility to the nation's energy markets. We look forward to working with you and your staff to improve the legislation as it moves forward.

Sincerely,

GLENN ENGLISH,
Chief Executive Officer.

WASHINGTON, DC,
February 7, 2003.

DEAR SENATOR FEINSTEIN: We are writing to express our support for the Energy Market Oversight Act being offered by yourself and Senators Lugar, Cantwell and Leahy. This important legislation will assure that over-the-counter derivatives markets in ''exempt'' commodities such as energy will be covered by federal prohibitions on fraud and manipulation. This regulatory assistance comes at a critical time. According to the Federal Energy Regulatory Commission's Director of the Office of Market Oversight, ''energy markets are in severe financial distress.'' Along with the decline in credit quality in these markets, the loss of confidence and trust has led to a ruin in the liquidity and depth of these markets. This legislation will go a long way to address this problem.

Derivatives are highly leveraged financial transactions, and this allows investors to potentially take a large position in the market without committing an equivalent amount of capital. Moreover, derivatives traded in over-the-counter markets are devoid of the transparency that characterizes exchange-traded derivatives such as futures, and this lack of transparency that characterizes exchange-traded derivatives such as futures, and this lack of transparency introduces a greater potential for abuse through fraud and manipulation.

Derivatives are often combined into highly complex structured transactions that are difficult—even for seasoned securities traders and finance professionals—to understand and price in the market. Enron used such over-the-counter derivatives extensively in order to hide the nature of their activities from investors. The failure of Enron and the demise of other energy derivatives dealers has had a devastating impact of the level of trust in energy markets.

This legislation would help ensure that over-the-counter derivatives markets operate with proper federal oversight which will make the markets more stable and transparent. It is appropriate to place this oversight authority with the Commodity Futures Trading Commission which, as the principal federal regulator of derivatives transactions since its founding in 1975, will provide oversight, surveillance and enforcement of anti-fraud and anti-manipulation laws. The CFTC has the experience to handle these complex financial transactions and to develop the best rules to implement these protections. The legislation also requires the cooperation of the Federal Energy Regulatory Commission, the entity charged with overseeing the energy markets, in providing a stable and honest market for the investing public.

At a time when these energy markets are deeply distressed and the investing public looks skeptically at derivatives trading and firms engaged in derivatives trading, we should take decisive steps to ensure that the public is protected from Enron-like abuses. This amendment is just such a step, and we support it.

Thank you for introducing this important legislation.

Sincerely,

ADAM J. GOLDBERG,
Policy Analyst, Consumers Union.
MARK N. COOPER,
Director of Research, Consumer Federation of America.
EDMUND MIERZWINSKI,
Consumer Program Director, U.S. Public Interest Research Group.
RANDALL DODD,
Director, Derivatives Study Center.

TRANSMISSION ACCESS
POLICY STUDY GROUP,
February 25, 2003.

Re Energy Market Oversight Act.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: I understand that you will be introducing shortly a stand-alone bill, entitled The Energy Market Oversight Act, which is similar to the amendment you offered last season to S. 517, the Energy Policy Act of 2002. This bill would, among other things, place derivative products for energy under the jurisdiction of the Commodities Future Trading Commission (CFTC), and enhance the Federal Energy Regulatory Commission's (FERC) remedial and penal authority.

On behalf of the Transmission Access Policy Study Group (TAPS), I would like to express our support for the policy objective of your proposed legislation: better protecting consumers from manipulation in the volatile energy markets. We look forward to working with you to refine the bill as it moves through the legislative process. Expanding the CFTC and FERC role in preventing and redressing energy market abuses is one of a number of avenues for enhanced consumer and market power protection that should be included if an electricity title moves forward this year. TAPS representatives would like to sit down with your staff and discuss the details of your bill and related matters, when convenient.

The other key related components of any electricity title are (i) strong consumer protections, as were offered in the Cantwell amendment (SA 3234) to the Energy Policy Act of 2002, (ii) expanding FERC's merger review authority as was done in S. 517, (iii) a strong market transparency requirement, and (iv) further strengthening FERC powers to remedy and penalize abuses of market power and market manipulation. Finally, we would strongly urge you to oppose repeal of the Public Utility Holding Company Act this year. Repealing PUHCA would lead to massive consolidation in the industry, increasing dramatically opportunities for manipulation of the market.

Very truly yours,

ROY THILLY,
TAPS Chairman.

Mrs. FEINSTEIN. Mr. President, here is an explanation of what this bill does: It applies anti-fraud and anti-manipulation authority to all exempt commodity transactions—an exempt commodity is a commodity which is not financial and not agricultural and mainly includes energy and metals.

The bill sets up two classes of swaps. For those made between ''sophisticated persons,'' basically institutions and wealthy individuals, that are not entered into on a ''trading facility''—for example, an exchange—anti-fraud and anti-manipulation provisions apply and wash trades are prohibited.

The following regulations would apply to all swaps made on an ''electronic trading facility'' and a ''dealer market'', which includes dealers who buy and sell swaps in exempt commodities, and the entity on which the swap takes place: anti-fraud and anti-manipulation provisions and the prohibition of wash trades apply; if the entity on which the swap takes place serves a pricing or price discovery function, increased notice, reporting, bookkeeping, and other transparency requirements; and the requirement to maintain sufficient capital commensurate with the risk associated with the swap;

Except for the anti-fraud and anti-manipulation provisions, the CFTC has the discretion to tailor the above requirements to fit the character and financial risk involved with the swap or entity. While the CFTC could require daily public disclosure of trading data like open and closing prices, similar to the requirements of futures exchanges, it could not require real-time publication of proprietary trading information or prohibit an entity from selling their data.

The CFTC may allow entities to meet certain self-regulatory responsibilities-as provided in a list of ''core principles.'' If an entity chose to become a

self-regulator, these core principles would obligate the entity to monitor trading to prevent fraud and manipulation as well as assure that its other regulatory obligations are met.

The penalties for manipulation are greatly increased. The civil monetary penalty for manipulation is increased from $100,000 to $1 million. Wash trades are subject to the monetary civil penalty for each violation, and imprisonment up to 10 years.

The FERC is required to improve communications with other Federal regulatory agencies. A shortcoming in the main anti-fraud provision of the CEA is also corrected by allowing CFTC enforcement of fraud to apply to instances of either defrauding a person for oneself or on behalf of others.

It requires the FERC and the CFTC to meet quarterly and discuss how energy derivative markets are functioning and affecting energy deliveries.

It grants the FERC the authority to use monetary penalties on companies that don't comply with requests for information. It is essentially the same authority that the SEC has.

It makes it easier for FERC to hire the necessary outside help they need including accountants, lawyers, and investigators for investigative purposes.

It eliminates the requirement that FERC receive approval from the Office of Management and Budget before launching an investigation or price discovery of electricity or natural gas markets involving more than 10 companies.

It increases the penalty amounts to $1 million instead of the current $5,000 for violations of the Federal Power Act and the Natural Gas Act; five years instead of the current two for violations of the statute; and, $50,000 per violation per day instead of the current $500 for violations of rules or orders under the Federal Power Act and Natural Gas Act.

The Commission's authority to impose civil penalties is broadened to all sections of Part II of the Federal Power Act and the penalty amount is increased from $10,000 to $50,000 per violation per day.

It modifies Section 206 of the Federal Power Act to allow for an earlier refund effective date to increase the opportunity for refunds as a deterrent to fraudulent and manipulative behavior in the energy markets.

This legislation is not going to do anything to change what happened in California and the West. But it does provide the necessary authority for the CFTC and FERC which will help protect against another energy crisis.

When regulatory agencies have the will but not the authority to regulate, Congress must step in and ensure that our regulators have the necessary tools. Unfortunately, sometimes an agency has neither. In this case I am glad to have the support of FERC and I hope that the CFTC will reconsider and support this legislation.

By Ms. SNOWE (for herself and Ms. COLLINS):

S. 510. A bill to establish a commercial truck highway safety demonstration program in the State of Maine, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today, along with my colleague Senator COLLINS, to introduce legislation, the Commercial Truck Highway Safety Demonstration Program Act, to create a safety pilot program for commercial trucks.

This bill would authorize a safety demonstration program in my home State of Maine that could be a model for other States. I have been working closely with the Maine Department of Transportation, communities in my State, and others to address statewide concerns about the existing Federal interstate truck weight limit of 80,000 pounds.

I believe that safety must be the No. 1 priority on our roads and highways, and I am very concerned that the existing interstate weight limit has the perverse impact of forcing commercial trucks onto State and local secondary roads that were never designed to handle heavy commercial trucks safely. We are talking about narrow roads, lanes, and rotaries, with frequent pedestrian crossings and school zones.

I have been working to address this concern for many years. During the 105th Congress, for example, I authored a provision providing a waiver from Federal weight limits on the Maine Turnpike, the 100-mile section of Maine's interstate in the southern portion of the State, and it was signed into law as part of TEA–21. I have also shared my concerns with the Department of Transportation and the Senate Environment and Public Works Committee to urge them to work with me in an effort to address this challenge.

In addition, the Main Department of Transportation is in the process of conducting a study of the truck weight limit waiver on the Maine Turnpike, and I have been working closely with the State in the hopes of expanding this study, which will focus on the safety impact of higher limits, infrastructure issues, air quality issues, and economic issues as well, in order to secure the data necessary to ensure that commercial trucks operate in the safest possible manner.

Federal law attempts to provide uniform truck weight limits, 80,000 pounds, on the Interstate System, but the fact is there are a myriad of exemptions and grandfathering provisions. Furthermore, interstate highways have safety features specifically designed for heavy truck traffic, whereas the narrow, winding State and local roads don't.

The legislation I am submitting today would simply direct the Secretary of Transportation to establish a 3-year pilot program to improve commercial motor vehicle safety in the State of Maine. Specifically, the measure would direct the Secretary, during this period, to waive Federal vehicle weight limitations on certain commercial vehicles weighing over 80,000 pounds using the Interstate System within Maine, permitting the State to set the weight limit. In addition, it would provide for the waiver to become permanent unless the Secretary determines it has resulted in an adverse impact on highway safety.

I believe this is a measured, responsible approach to a very serious public safety issue. I hope to work with all of those with a stake in this issue, safety advocates, truckers, States, and communities, to address this matter in the most effective possible way, and I hope that my colleagues will join me in this effort.

Ms. COLLINS. Mr. President, I rise to join with my senior colleague from Maine in sponsoring the Commercial Truck Highway Safety Demonstration Program Act, an important bill that addresses a significant safety problem in our State.

Under current law, trucks weighing as much as 100,000 pounds are allowed to travel on Interstate 95 from Maine's border with New Hampshire to Augusta, our capital city. At Augusta, trucks weighing more than 80,000 pounds are forced off Interstate 95, which proceeds north to Houlton. Heavy trucks are forced onto smaller, secondary roads that pass through cities, towns, and villages.

Trucks weighing up to 100,000 pounds are permitted on interstate highways in New Hampshire, Massachusetts, and New York as well as the Canadian provinces of New Brunswick and Quebec. The weight limit disparity on various segments of Maine's Interstate Highway System forces trucks traveling to and from destinations in these States and provinces to use Maine's State and local roads, nearly all of which have two lanes, rather than four. Consequently, many Maine communities along the interstate see substantially more truck traffic than would otherwise be the case if the weight limit were 100,000 pounds for all of Maine's interstate highways.

The problem Maine faces because of the disparity in truck weight limit is perhaps most pronounced in our State capital. Augusta is the Maine Turnpike's northern terminus where heavy trucks that are prohibited from traveling along the northern segment of Interstate 95 enter and exit the turnpike. The high number of trucks that must traverse Augusta's local roads, and particularly its two rotaries, creates a hazard for those who live and work in as well as visit the city.

The Maine Department of Transportation estimates that the truck weight disparity sends 310 vehicles in excess of 80,000 pounds through Augusta every day. These vehicles, which are sometimes transporting hazardous materials, must pass through Cony Circle, one of the State's most dangerous traffic circles and the scene of 130 accidents per year. The fact that the circle

is named for the 1,200 student high school that it abuts adds to the severity of the problem.

A uniform truck weight limit of 100,000 pounds on Maine's interstate highways would reduce the highway miles and travel times necessary to transport freight through Maine, resulting in economic and environmental benefits. Moreover, Maine's extensive network and local roads will be better preserved without the wear and tear of heavy truck traffic. Most important, however, a uniform truck weight limit will keep trucks on the interstate where they belong, rather than on roads and highways that pass through Maine's cities, towns, and neighborhoods.

The legislation that Senator SNOWE and I are introducing addresses the safety issues we face in Maine because of the disparities in truck weight limits. The legislation directs the Secretary of Transportation to establish a commercial truck safety pilot program in Maine. Under the pilot program, the truck weight limit on all Maine highways that are part of the Interstate Highway System would be set at 100,000 pounds for 3 years. During the waiver period, the Secretary would study the impact of the pilot program on safety, and would receive the input of a panel that would include State officials, safety organizations, municipalities, and the commercial trucking industry. The waiver would become permanent if the panel determined that motorists were safer as a result of a uniform truck weight limit on Maine's Interstate Highway System.

Maine's citizens and motorists are needlessly at risk because too many heavy trucks are forced off the interstate and on to local roads. The legislation Senator SNOWE and I are introducing is a commonsense approach to a significant safety problem in my State. I hope my colleagues will support passage of this important legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 71—EXPRESSING THE SUPPORT FOR THE PLEDGE OF ALLEGIANCE

Ms. MURKOWSKI (for herself, Mr. MCCONNELL, Mr. GREGG, Mr. HATCH, Mr. ALLEN, Mr. ALEXANDER, Mr. ALLARD, Mr. BENNETT. Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. CHAFEE, Mr. CHAMBLISS, Mr. COCHRAN, Mr. COLEMAN, Ms. COLLINS, Mr. CORNYN, Mr. CRAIG, Mr. CRAPO, Mr. DEWINE, Mrs. DOLE, Mr. ENSIGN, Mr. FITZGERALD, Mr. GRAHAM of South Carolina, Mr. HAGEL, Mrs. HUTCHISON, Mr. INHOFE, Mr. KYL, Mr. LOTT, Mr. LUGAR, Mr. MCCAIN, Mr. NICKLES, Mr. ROBERTS, Mr. SANTORUM, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Mr. STEVENS, Mr. SUNUNU, Mr. TALENT, Mr. THOMAS, Mr. WARNER, Mr. SESSIONS, and Ms. LANDRIEU) submitted the following resolution; which was ordered held at the desk

S. RES. 71

Whereas a 3-judge panel of the Ninth Circuit Court of Appeals has ruled in *Newdow v. United States Congress* that the words ''under God'' in the Pledge of Allegiance violate the Establishment Clause when recited voluntarily by students in public schools;

Whereas the Ninth Circuit has voted not to have the full court, en banc, reconsider the decision of the panel in *Newdow*;

Whereas this country was founded on religious freedom by the Founding Fathers, many of whom were deeply religious;

Whereas the First Amendment to the Constitution embodies principles intended to guarantee freedom of religion both through the free exercise thereof and by prohibiting the Government establishing a religion;

Whereas the Pledge of Allegiance was written by Francis Bellamy, a Baptist minister, and first published in the September 8, 1892, issue of the Youth's Companion;

Whereas Congress, in 1954, added the words ''under God'' to the Pledge of Allegiance;

Whereas the Pledge of Allegiance has for almost 50 years included references to the United States flag, the country, to our country having been established as a union ''under God'' and to this country being dedicated to securing ''liberty and justice for all'';

Whereas Congress in 1954 believed it was acting constitutionally when it revised the Pledge of Allegiance;

Whereas the 107th Congress overwhelmingly passed a resolution disapproving of the panel decision of the Ninth Circuit in *Newdow*, and overwhelmingly passed legislation recodifying Federal law that establishes the Pledge of Allegiance in order to demonstrate Congress's opinion that voluntarily reciting the Pledge in public schools is constitutional;

Whereas the Senate believes that the Pledge of Allegiance, as revised in 1954 and as recodified in 2002, is a fully constitutional expression of patriotism;

Whereas the National Motto, patriotic songs, United States legal tender, and engravings on Federal buildings also refer to ''God''; and

Whereas in accordance with decisions of the United States Supreme Court, public school students are already protected from being compelled to recite the Pledge of Allegiance: Now, therefore, be it

Resolved, That the Senate—

(1) strongly disapproves of a decision by a panel of the Ninth Circuit in *Newdow*, and the decision of the full court not to reconsider this case en banc; and

(2) authorizes and instructs the Senate Legal Counsel again to seek to intervene in the case to defend the constitutionality of the words ''under God'' in the Pledge, and, if unable to intervene, to file an amicus curiae brief in support of the continuing constitutionality of the words ''under God'' in the Pledge.

SENATE RESOLUTION 72—ELECTING WILLIAM H. PICKLE OF COLORADO AS THE SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE

Mr. FRIST submitted the following resolution; which was considered and agreed to:

S. RES. 72

Resolved, That William H. Pickle of Colorado be, and he is hereby, elected Sergeant at Arms and Doorkeeper of the Senate effective March 17, 2003.

SENATE RESOLUTION 73—REMEMBERING AND HONORING THE HEROIC LIVES OF ASTRONAUTS AIR FORCE LIEUTENANT COLONAL MICHAEL ANDERSON AND NAVY COMMANDER WILLIAM ''WILLIE'' MCCOOL

Ms. CANTWELL (for herself, Mrs. MURRAY, Mr. REID, and Mr. BROWNBACK) submitted the following resolution; which was considered and agreed to:

S. RES. 73

Whereas mankind lost 7 heroes with the tragic explosion of the Space Shuttle Columbia on February 1, 2003;

Whereas the families and friends of the 7 astronauts, the National Aeronautics and Space Administration, the entire Nation, and people around the world who followed the historic mission will deeply miss the 7 crew members of the Space Shuttle Columbia;

Whereas the astronauts made an important contribution as models of bravery, courage, and excellence for men, women, and children around the world;

Whereas 2 of these heroes, Air Force Lieutenant Colonel Michael Anderson and Navy Commander William ''Willie'' McCool, are particularly close to the hearts of residents of the State of Washington;

Whereas Lieutenant Colonel Anderson was a beloved son of the Spokane community since moving there at the age of 11, and a cherished hero for men, women, and children in Washington;

Whereas Lieutenant Colonel Anderson was a hero, long before accepting the challenge of the Columbia mission, for leading a life characterized by courage, achievement against many odds, and sacrifice for this country;

Whereas the story of Lieutenant Colonel Anderson is even more remarkable in light of the barriers to success that young African-Americans in this country have had to overcome;

Whereas this remarkable story has long been shared at the childhood church of Lieutenant Colonel Anderson and throughout the Spokane African-American community, and has inspired a generation of children;

Whereas throughout his early education in Spokane area public schools, Lieutenant Colonel Anderson focused on voyaging to space as an astronaut and became an exceptional science student;

Whereas since becoming an astronaut in 1994, Lieutenant Colonel Anderson took to heart the special responsibility of serving as a role model for children around the country and back home;

Whereas after his 1998 flight on the Space Shuttle Endeavor to the Mir Space Station, Lieutenant Colonel Anderson returned to Cheney High School in Spokane and told a crowd of enthralled students that dreams such as his of becoming an astronaut can be achieved with hard work and clear goals;

Whereas Lieutenant Colonel Anderson embodied excellence and provided a triumphant example of accomplishment for Americans of all colors, races, and backgrounds;

Whereas the Washington family lost another dear friend in Commander McCool, who made Anacortes, Washington his home during 2 periods of service at Naval Air Station Whidbey Island;

Whereas community members remember Commander McCool for his kindness, professionalism, and love of his children;

Whereas Commander McCool continued to pay visits to the Anacortes community and was a cherished member of the community; and

Whereas Lieutenant Colonel Anderson and Navy Commander McCool will be missed but never forgotten: Now, therefore, be it

Resolved, That the Senate remembers and honors the heroic lives of astronauts Lieutenant Colonel Michael Anderson and Commander William McCool.

AMENDMENTS SUBMITTED & PROPOSED

SA 249. Ms. MURKOWSKI proposed an amendment to the bill S. Res. 71, expressing the support for the Pledge of Allegiance.

TEXT OF AMENDMENTS

SA 249. Ms. MURKOWSKI proposed an amendment to the bill S. Res. 71, expressing the support for the Pledge of Allegiance; as follows:

On page 3, line 7 of the resolution strike ''again'' and insert ''either''

On page 3, line 9 of the resolution strike ''and, if unable to intervene,'' and insert ''or''

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to conduct a hearing during the session of the Senate on Tuesday, March 4, 2003. The purpose of this hearing will be to review the Federal Government's initiatives regarding the school lunch and school breakfast programs.

COMMITTEE ON ARMED SERVICES

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, March 4, 2003, at 9:30 a.m., in closed session to receive a classified briefing on current operations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. ALLEN. Mr. President, I ask unanimous consent that the committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on March 4, 2003, at 10 a.m. to conduct a hearing on ''The Administration's Proposed Fiscal Year 2004 Budget for the Department of Housing and Urban Development.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on March 4, 2003, at 10 a.m. on the nomination of Dr. Charles McQueary to be Under Secretary for Science and Technology, Department of Homeland Security; Jeffrey Shane to be Under Secretary of Transportation for Policy, Department of Transportation; Emil Frankel to be Assistant Secretary of Transportation, Department of Transportation; and Robert Sturgell, Deputy Administrator, Federal Aviation Administration.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Tuesday, March 4 at 10 a.m. to receive testimony on the financial condition of the electricity market.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 4, 2003 at 9:30 a.m. to hold a hearing on the Millennium challenge Account: A New Way to Aid.

Witnesses

Panel 1: The Honorable Alan Larson, UnderSecretary of State of Economic, Business & Agricultural Affairs, Department of State, Washington, DC,

The Honorable John Taylor, Under Secretary for International Affairs, Department of the Treasury, Washington, DC,

The Honorable Andrew S. Natsios, Administrator, Agency for International Development, Washington, DC.

Panel 2: Dr. Steven Radelet, Senior Fellow, Center for Global Development, Washington, DC;

Ms. Mary E. McClymont, President and CEO, Interaction, Washington, DC;

Ms. Susan Berresford, President, Ford Foundation, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. Allen. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''The War Against Terrorism: Working Together to Protect America'' on Tuesday, March 4, 2003, at 9:30 a.m. in Dirksen Room 106.

Tentative Witness List

The Honorable John D. Ashcroft, Attorney General of the United States, Department of Justice, Washington, DC;

The Honorable Thomas J. Ridge, Secretary, Office of Homeland Security, Washington, DC;

The Honorable Robert S. Mueller, Director, Federal Bureau of Investigation, Department of Justice, Washington, DC.

THE PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Tuesday, March 4, 2003, for a hearing to consider the nomination of: Mr. Bruce E. Kasold to be a Judge, U.S. Court of Appeals for Veterans' Claims; and Brigadier General John W. Nicholson, USA (ret.), to be Under Secretary Memorial Affairs, Department of Veterans Affairs.

The hearing will take place in room 418 of the Russell Senate Office Building at 2:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. ALLEN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, March 4, 2003 at 2:30 p.m. to hold a closed hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON NATIONAL PARKS, HISTORIC PRESERVATION, AND RECREATION

Mr. ALLEN. Mr. President, I ask unanimous consent that the Subcommittee on National Parks, Historic Preservation and Recreation, Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Tuesday, March 4 at 2:30 p.m. to receive testimony on S. 164, a bill to authorize the Secretary of the Interior to conduct a special resource study of sites associated with the life of César Estrada Chávez and the Farm Labor Movement; S. 328 a bill to designate Catoctin Mountain Park in the State of Maryland as the ''Catoctin Mountain National Recreation Area,'' and for other purposes; S. 347 a bill to direct the Secretary of the Interior and the Secretary of Agriculture to conduct a joint special resources study to evaluate the suitability and feasibility of establishing the Rim of the Valley Corridor as a unit of the Santa Monica Mountains National Recreation Area, and for other purposes; S. 425 a bill to revise the boundary of the wind Cave National Park in the State of South Dakota.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. FRIST. I ask unanimous consent the Senate proceed en bloc to the immediate consideration of the following bills: Calendar No. 12, S. 111; Calendar No. 13, S. 117; Calendar No. 14, S. 144; Calendar No. 15, S. 210; Calendar No. 16, S. 214; Calendar No. 17, S. 233; and Calendar No. 18, S. 254.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. I further ask unanimous consent that where applicable the committee amendment be agreed to, the bills as amended be amended, the bills be read a third time and passed, the motions to reconsider be laid on the table, any statements relating to the

bills be printed in the RECORD, with the above occurring en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

DETERMINING THE NATIONAL SIGNIFICANCE OF THE MIAMI CIRCLE

The Senate proceeded to consider the bill (S. 111) which had been reported from the Committee on Energy and Natural Resources, to direct the Secretary of Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes, with an amendment to strike all after the enacting clause.

The bill (S. 111), as amended, was read the third time and passed as follows:

S.111

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SPECIAL RESOURCE STUDY.

(a) STUDY.—Not later than 3 years after the date funds are made available, the Secretary of the Interior (hereinafter referred to as the ''Secretary'') shall conduct a special resource study to determine the national significance of the Miami Circle archaeological site in Miami-Dade County, Florida (hereinafter referred to as ''Miami Circle''), as well as the suitability and feasibility of its inclusion in the National Park System as part of the Biscayne National Park. In conducting the study, the Secretary shall consult with the appropriate American Indian tribes and other interested groups and organizations.

(b) CONTENT OF STUDY.—In addition to determining national significance, feasibility, and suitability, the study shall include the analysis and recommendations of the Secretary on—

(1) any areas in or surrounding the Miami Circle that should be included in Biscayne National Park;

(2) whether additional staff, facilities, or other resources would be necessary to administer the Miami Circle as a unit of Biscayne National Park; and

(3) any effect on the local area from the inclusion of Miami Circle in Biscayne National Park.

(c) SUBMISSION OF REPORT.—Not later than 30 days after completion of the study, the Secretary shall submit a report on the findings and recommendations of the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the United States House of Representatives.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

AUTHORIZATION TO SELL OR EXCHANGE CERTAIN LAND IN THE STATE OF FLORIDA

The bill (S. 117) to authorize the Secretary of Agriculture to sell or exchange certain land in the State of Florida, and for other purposes, was considered, ordered to a third reading, read the third time, and passed, as follows:

S. 117

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Florida National Forest Land Management Act of 2003''.

SEC. 2. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(2) STATE.—The term ''State'' means the State of Florida.

SEC. 3. SALE OR EXCHANGE OF LAND.

(a) IN GENERAL.—The Secretary may, under such terms and conditions as the Secretary may prescribe, sell or exchange any right, title, and interest of the United States in and to the parcels of Federal land in the State described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcels of Federal land in the State referred to in subsection (a) consist of—

(1) tract A–942a, East Bay, Santa Rosa County, consisting of approximately 61 acres, and more particularly described as T. 1 S., R. 27 W., sec. 31, W½ of SW¼;

(2) tract A–942b, East Bay, Santa Rosa County, consisting of approximately 40 acres, and more particularly described as T. 1 S., R. 27 W., sec. 38;

(3) tract A–942c, Ft. Walton, Okaloosa County, located southeast of the intersection of and adjacent to State Road 86 and Mooney Road, consisting of approximately 0.59 acres, and more particularly described as T. 1 S., R. 24 W., sec. 26;

(4) tract A–942d, located southeast of Crestview, Okaloosa County, consisting of approximately 79.90 acres, and more particularly described as T. 2 N., R. 23 W., sec. 2, NW¼ NE¼ and NE¼ NW¼;

(5) tract A–943, Okaloosa County Fairgrounds, Ft. Walton, Okaloosa County, consisting of approximately 30.14 acres, and more particularly described as T. 1 S., R. 24 W., sec. 26, S½;

(6) tract A–944, City Ball Park—Ft. Walton, Okaloosa County, consisting of approximately 12.43 acres, and more particularly described as T. 1 S., R. 24 W., sec. 26, S½;

(7) tract A–945, Landfill-Golf Course Driving Range, located southeast of Crestview, Okaloosa County, consisting of approximately 40.85 acres, and more particularly described as T. 2 N., R. 23 W., sec. 4, NW¼ NE¼;

(8) tract A–959, 2 vacant lots on the north side of Micheaux Road in Bristol, Liberty County, consisting of approximately 0.5 acres, and more particularly described as T. 1 S., R. 7 W., sec. 6;

(9) tract C–3m–d, located southwest of Astor in Lake County, consisting of approximately 15.0 acres, and more particularly described as T. 15 S., R. 28 E., sec. 37;

(10) tract C–691, Lake County, consisting of the subsurface rights to approximately 40.76 acres of land, and more particularly described as T. 17 S., R. 29 E., sec. 25, SE¼ NW¼;

(11) tract C–2208b, Lake County, consisting of approximately 39.99 acres, and more particularly described as T. 17 S., R. 28 E., sec. 28, NW¼ SE¼;

(12) tract C–2209, Lake County, consisting of approximately 127.2 acres, as depicted on the map, and more particularly described as T. 17 S., R. 28 E., sec. 21, NE¼ SW¼, SE¼ NW¼, and SE¼ NE¼;

(13) tract C–2209b, Lake County, consisting of approximately 39.41 acres, and more particularly described as T. 17 S., R. 29 E., sec. 32, NE¼ SE¼;

(14) tract C–2209c, Lake County, consisting of approximately 40.09 acres, and more particularly described as T. 18 S., R. 28 E., sec. 14, SE¼ SW¼;

(15) tract C–2209d, Lake County, consisting of approximately 79.58 acres, and more particularly described as T. 18 S., R. 29 E., sec. 5, SE¼ NW¼, NE¼ SW¼;

(16) tract C–2210, government lot 1, 20 recreational residential lots, and adjacent land on Lake Kerr, Marion County, consisting of approximately 30 acres, and more particularly described as T. 13 S., R. 25 E., sec. 22;

(17) tract C–2213, located in the F.M. Arrendondo grant, East of Ocala, Marion County, and including a portion of the land located east of the western right-of-way of State Highway 19, consisting of approximately 15.0 acres, and more particularly described as T. 14 and 15 S., R. 26 E., sec. 36, 38, and 40; and

(18) all improvements on the parcels described in paragraphs (1) through (17).

(c) LEGAL DESCRIPTION MODIFICATION.—The Secretary may, for the purposes of soliciting offers for the sale or exchange of land under subsection (d), modify the descriptions of land specified in subsection (b) based on—

(1) a survey; or

(2) a determination by the Secretary that the modification would be in the best interest of the public.

(d) SOLICITATIONS OF OFFERS.—

(1) IN GENERAL.—Subject to such terms and conditions as the Secretary may prescribe, the Secretary may solicit offers for the sale or exchange of land described in subsection (b).

(2) REJECTION OF OFFERS.—The Secretary may reject any offer received under this section if the Secretary determines that the offer—

(A) is not adequate; or

(B) is not in the public interest.

(e) METHODS OF SALE.—The Secretary may sell the land described in subsection (b) at public or private sale (including at auction), in accordance with any terms, conditions, and procedures that the Secretary determines to be appropriate.

(f) BROKERS.—In any sale or exchange of land described in subsection (b), the Secretary may—

(1) use a real estate broker; and

(2) pay the real estate broker a commission in an amount that is comparable to the amounts of commission generally paid for real estate transactions in the area.

(g) CONCURRENCE OF THE SECRETARY OF THE AIR FORCE.—A parcel of land described in paragraphs (1) through (7) of subsection (b) shall not be sold or exchanged by the Secretary without the concurrence of the Secretary of the Air Force.

(h) CASH EQUALIZATION.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), if the value of non-Federal land for which Federal land is exchanged under this section is less than the value of the Federal land exchanged, the Secretary may accept a cash equalization payment in excess of 25 percent of the value of the Federal land.

(i) DISPOSITION OF PROCEEDS.—

(1) IN GENERAL.—The net proceeds derived from any sale or exchange under this Act shall be deposited in the fund established by Public Law 90–171 (commonly known as the ''Sisk Act'') (16 U.S.C. 484a).

(2) USE.—Amounts deposited under paragraph (1) shall be available to the Secretary for expenditure, without further appropriation, for—

(A) acquisition of land and interests in land for inclusion as units of the National Forest System in the State; and

(B) reimbursement of costs incurred by the Secretary in carrying out land sales and exchanges under this Act, including the payment of real estate broker commissions under subsection (f).

SEC. 4. ADMINISTRATION.

(a) IN GENERAL.—Land acquired by the United States under this Act shall be—

(1) subject to the Act of March 1, 1911 (commonly known as the ''Weeks Act'') (16 U.S.C. 480 et seq.); and

(2) administered in accordance with laws (including regulations) applicable to the National Forest System.

(b) APPLICABLE LAW.—The land described in section 3(b) shall not be subject to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(c) WITHDRAWAL.—Subject to valid existing rights, the land described in section 3(b) is withdrawn from location, entry, and patent under the public land laws, mining laws, and mineral leasing laws (including geothermal leasing laws).

PROVIDING ASSISTANCE TO ELIGIBLE WEED MANAGEMENT ENTITIES

The Senate proceeded to consider the bill (S. 144) which had been reported from the Committee on Energy and Natural Resources, to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control and eradicate harmful, nonnative weeds on public and private land, with an amendment to strike all after the enacting clause.

The bill (S. 144), as amended, was read the third time and passed, as follows:

S. 144

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Noxious Weed Control Act of 2003''.

SEC. 2. DEFINITIONS.

In this Act:

(1) NOXIOUS WEED.—The term ''noxious weed'' has the same meaning as in the Plant Protection Act (7 U.S.C. 7702(10)).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(3) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Island, and any other possession of the United States.

(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) WEED MANAGEMENT ENTITY.—The term ''weed management entity'' means an entity that—

(A) is recognized by the State in which it is established;

(B) is established by and includes local stakeholders, including Indian tribes;

(C) is established for the purpose of controlling or eradicating harmful, invasive weeds and increasing public knowledge and education concerning the need to control or eradicate harmful, invasive weeds; and

(D) is multijurisdicational and multidisciplinary in nature.

SEC. 3. ESTABLISHMENT OF PROGRAM.

The Secretary shall establish a program to provide financial assistance through States to eligible weed management entities to control or eradicate weeds. In developing the program, the Secretary shall consult with the National Invasive Species Council, the Invasive Species Advisory Committee, representatives from States and Indian tribes with weed management entities or that have particular problems with noxious weeds, and public and private entities with experience in noxious weed management.

SEC. 4. ALLOCATION OF FUNDS TO STATES AND INDIAN TRIBES.

The Secretary shall allocate funds to States to provide funding to weed management entities to carry out projects approved by States to control or eradicate noxious weeds on the basis of the severity or potential severity of the noxious weed problem, the extent to which the Federal funds will be used to leverage non-Federal funds, the extent to which the State has made progress in addressing noxious weed problems, and such other factors as the Secretary deems relevant. The Secretary shall provide special consideration for States with approved weed management entities established by Indian Tribes, and may provide an additional allocation to a State to meet the particular needs and projects that such a weed management entity will address.

SEC. 5. ELIGIBILITY AND USE OF FUNDS.

(a) REQUIREMENTS.—The Secretary shall prescribe requirements for applications by States for funding, including provisions for auditing of and reporting on the use of the funds and criteria to ensure that weed management entities recognized by States are capable of carrying out projects, monitoring and reporting on the use of funds, and are knowledgeable about and experienced in noxious weed management and represent private and public interests adversely affected by noxious weeds. Eligible activities for funding shall include—

(1) applied research to solve locally significant weed management problems and solutions, except that such research may not exceed 8 percent of the available funds in any year;

(2) incentive payments to encourage the formation of new weed management entities, except that such payments may not exceed 25 percent of the available funds in any year; and

(3) projects relating to the control or eradication or noxious weeds, including education, inventories and mapping, management, monitoring, and similar activities, including the payment of the cost of personnel and equipment that promote such control or eradication, and other activities to promote such control or eradication, if the results of the activities are disseminated to the public.

(b) PROJECT SELECTION.—A State shall select projects for funding to a weed management entity on a competitive basis considering—

(1) the seriousness of the noxious weed problem or potential problem addressed by the project;

(2) the likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems in the future;

(3) the extent to which the payment will leverage non-Federal funds to address the noxious weed problem addressed by the project;

(4) the extent to which the weed management entity has made progress in addressing noxious weed problems;

(5) the extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds;

(6) the extent to which the project will reduce the total population of a noxious weed;

(7) the extent to which the project uses the principles of integrated vegetation management and sound science; and

(8) such other factors that the State determines to be relevant.

(c) INFORMATION AND REPORT.—As a condition of the receipt of funding, States shall require such information from grant recipients as necessary and shall submit to the Secretary a report that describes the purposes and results of each project for which the payment or award was used, by not later than 6 months after completion of the projects.

(d) FEDERAL SHARE.—The Federal share of any project or activity approved by a State or Indian tribe under this Act may not exceed 50 percent unless the State meets criteria established by the Secretary that accommodates situations where a higher percentage is necessary to meet the needs of an underserved area or addresses a critical need that can not be met otherwise.

SEC. 6. LIMITATIONS.

(A) LANDOWNER CONSENT; LAND UNDER CULTIVATION.—Any activity involving real property, either private or public, may be carried out under this Act only with the consent of the landowner and no project may be undertaken on property that is devoted to the cultivation of row crops, fruits, or vegetables.

(b) COMPLIANCE WITH STATE LAW.—A weed management entity may carry out a project to address the noxious weed problem in more than one State only if the entity meets the requirements of the State laws in all States in which the entity will undertake the project.

(c) USE OF FUNDS.—Funding under this Act may not be used to carry out a project—

(1) to control or eradicate animals, pests, or submerged or floating noxious aquatic weeds; or

(2) to protect an agricultural commodity (as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602)) other than—

(A) livestock (as defined in section 602 of the Agricultural Trade Act of 1949 (7 U.S.C. 1471); or

(B) an animal- or insect-based product.

SEC. 7. RELATIONSHIP TO OTHER PROGRAMS.

Assistance authorized under this Act is intended to supplement, and not replace, assistance available to weed management entities, areas, and districts for control or eradication of harmful, invasive weeds on public lands and private lands, including funding available under the ''Pulling Together Initiative'' of the National Fish and Wildlife Foundation, and the provision of funds to any entity under this Act shall have no effect on the amount of any payment received by a county from the Federal Government under chapter 69 of title 31, United States Code (commonly known as the Payments in Lieu of Taxes Act).

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

To carry out this Act there is authorized to be appropriated to the Secretary $100,000,000 for each of fiscal years 2003 through 2007, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs of Federal agencies.

PROTECTION OF ARCHAEOLOGICAL SITES IN NEW MEXICO

The bill (S. 210) to provide for the protection of archaeological sites in the Galisteo Basin in New Mexico, and for other purposes, was considered, ordered to a third reading, read the third time, and passed, as follows:

S. 210

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Galisteo Basin Archaeological Sites Protection Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Galisteo Basin and surrounding area of New Mexico is the location of many well preserved prehistoric and historic archaeological resources of Native American and Spanish colonial cultures;

(2) these resources include the largest ruins of Pueblo Indian settlements in the United States, spectacular examples of Native American rock art, and ruins of Spanish colonial settlements; and

(3) these resources are being threatened by natural causes, urban development, vandalism, and uncontrolled excavations.

(b) PURPOSE.—The purpose of this Act is to provide for the preservation, protection, and interpretation of the nationally significant archaeological resources in the Galisteo Basin in New Mexico.

SEC. 3. GALISTEO BASIN ARCHAEOLOGICAL PROTECTION SITES.

(a) IN GENERAL.—The following archaeological sites located in the Galisteo Basin in the State of New Mexico, totaling approximately 4,591 acres, are hereby designated as Galisteo Basin Archaeological Protection Sites:

Name	Acres
Arroyo Hondo Pueblo	21
Burnt Corn Pueblo	110
Chamisa Locita Pueblo	16
Comanche Gap Petroglyphs	764
Espinoso Ridge Site	160
La Cienega Pueblo & Petroglyphs	126
La Cienega Pithouse Village	179
La Cieneguilla Petroglyphs/Camino Real Site.	531
La Cieneguilla Pueblo	11
Lamy Pueblo	30
Lamy Junction Site	80
Las Huertas	44
Pa'ako Pueblo	29
Petroglyph Hill	130
Pueblo Blanco	878
Pueblo Colorado	120
Pueblo Galisteo/Las Madres	133
Pueblo Largo	60
Pueblo She	120
Rote Chert Quarry	5
San Cristobal Pueblo	520
San Lazaro Pueblo	360
San Marcos Pueblo	152
Upper Arroyo Hondo Pueblo	12
Total Acreage	4,591

(b) AVAILABILITY OF MAPS.—The archaeological protection sites listed in subsection (a) are generally depicted on a series of 19 maps entitled ''Galisteo Basin Archaeological Protection Sites'' and dated July, 2002. The Secretary of the Interior (hereinafter referred to as the ''Secretary'') shall keep the maps on file and available for public inspection in appropriate offices in New Mexico of the Bureau of Land Management and the National Park Service.

(c) BOUNDARY ADJUSTMENTS.—The Secretary may make minor boundary adjustments to the archaeological protection sites by publishing notice thereof in the Federal Register.

SEC. 4. ADDITIONAL SITES.

(a) IN GENERAL.—The Secretary shall—

(1) continue to search for additional Native American and Spanish colonial sites in the Galisteo Basin area of New Mexico; and

(2) submit to Congress, within three years after the date funds become available and thereafter as needed, recommendations for additions to, deletions from, and modifications of the boundaries of the list of archaeological protection sites in section 3 of this Act.

(b) ADDITIONS ONLY BY STATUTE.—Additions to or deletions from the list in section 3 shall be made only by an Act of Congress.

SEC. 5. ADMINISTRATION.

(a) IN GENERAL.—

(1) The Secretary shall administer archaeological protection sites located on Federal land in accordance with the provisions of this Act, the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.), and other applicable laws in a manner that will protect, preserve, and maintain the archaeological resources and provide for research thereon.

(2) The Secretary shall have no authority to administer archaeological protection sites which are on non-Federal lands except to the extent provided for in a cooperative agreement entered into between the Secretary and the landowner.

(3) Nothing in this Act shall be construed to extend the authorities of the Archaeological Resources Protection Act of 1979 or the Native American Graves Protection and Repatriation Act to private lands which are designated as an archaeological protection site.

(b) MANAGEMENT PLAN.—

(1) IN GENERAL.—Within three complete fiscal years after the date funds are made available, the Secretary shall prepare and transmit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives, a general management plan for the identification, research, protection, and public interpretation of—

(A) the archaeological protection sites located on Federal land; and

(B) for sites on State or private lands for which the Secretary has entered into cooperative agreements pursuant to section 6 of this Act.

(2) CONSULTATION.—The general management plan shall be developed by the Secretary in consultation with the Governor of New Mexico, the New Mexico State Land Commissioner, affected Native American pueblos, and other interested parties.

SEC. 6. COOPERATIVE AGREEMENTS.

The Secretary is authorized to enter into cooperative agreements with owners of non-Federal lands with regard to an archaeological protection site, or portion thereof, located on their property. The purpose of such an agreement shall be to enable the Secretary to assist with the protection, preservation, maintenance, and administration of the archaeological resources and associated lands. Where appropriate, a cooperative agreement may also provide for public interpretation of the site.

SEC. 7. ACQUISITIONS.

(a) IN GENERAL.—The Secretary is authorized to acquire lands and interests therein within the boundaries of the archaeological protection sites, including access thereto, by donation, by purchase with donated or appropriated funds, or by exchange.

(b) CONSENT OF OWNER REQUIRED.—The Secretary may only acquire lands or interests therein with the consent of the owner thereof.

(c) STATE LANDS.—The Secretary may acquire lands or interests therein owned by the State of New Mexico or a political subdivision thereof only by donation or exchange, except that State trust lands may only be acquired by exchange.

SEC. 8. WITHDRAWAL.

Subject to valid existing rights, all Federal lands within the archaeological protection sites are hereby withdrawn—

(1) from all forms of entry, appropriation, or disposal under the public land laws and all amendments thereto;

(2) from location, entry, and patent under the mining law and all amendments thereto; and

(3) from disposition under all laws relating to mineral and geothermal leasing, and all amendments thereto.

SEC. 9. SAVINGS PROVISIONS.

Nothing in this Act shall be construed—

(1) to authorize the regulation of privately owned lands within an area designated as an archaeological protection site;

(2) to modify, enlarge, or diminish any authority of Federal, State, or local governments to regulate any use of privately owned lands;

(3) to modify, enlarge, or diminish any authority of Federal, State, tribal, or local governments to manage or regulate any use of land as provided for by law or regulation; or

(4) to restrict or limit a tribe from protecting cultural or religious sites on tribal lands.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

DESIGNATING FORT BAYARD HISTORIC DISTRICT IN THE STATE OF THE NEW MEXICO AS A NATIONAL HISTORIC LANDMARK

The Senate proceeded to consider the bill (S. 214) which had been reported from the Committee on Energy and Natural Resources, to designate Fort Bayard historic district in the State of New Mexico as a national historic landmark, and for other purposes, with an amendment to strike all after the enacting clause.

The bill (S. 214), as amended, was read the third time and passed, as follows:

S. 214

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fort Bayard National Historic Landmark Act''.

SEC. 2. FORT BAYARD NATIONAL HISTORIC LANDMARK.

(a) DESIGNATION.—The Fort Bayard Historic District in Grant County, New Mexico, as listed on the National Register of Historic Places, is hereby designated as the Fort Bayard National Historic Landmark.

(b) ADMINISTRATION.—

(1) Designation of the Fort Bayard Historic District as a National Historic Landmark shall not prohibit any actions which may otherwise be taken by the property owner with respect to the property.

(2) Nothing in this Act shall affect the administration of the Fort Bayard Historic District by the State of New Mexico.

SEC. 3. COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—The Secretary, in consultation with the State of New Mexico, may enter into cooperative agreements with appropriate public or private entities, for the purposes of protecting historic resources at Fort Bayard and providing educational and interpretive facilities and programs for the public. The Secretary shall not enter into any agreement or provide assistance to any activity affecting Fort Bayard State Hospital without the concurrence of the State of New Mexico.

(b) TECHNICAL AND FINANCIAL ASSISTANCE.—The Secretary may provide technical and financial assistance with any entity

with which the Secretary has entered into a cooperative agreement under subsection (a).

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

CONDUCTING A STUDY OF COLTSVILLE, CONNECTICUT, FOR INCLUSION IN THE NATIONAL PARK SYSTEM

The bill (S. 233) to direct the Secretary of the Interior to conduct a study of Coltsville in the State of Connecticut for potential inclusion in the National Park System was considered, ordered to a third reading, read the third time, and passed, as follows:

S. 233

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Coltsville Study Act of 2003''.

SEC. 2. FINDINGS.

Congress finds that—

(1) Hartford, Connecticut, home to Colt Manufacturing Company (referred to in this Act as ''Colt''), played a major role in the Industrial Revolution;

(2) Samuel Colt, founder of Colt, and his wife, Elizabeth Colt, inspired Coltsville, a community in the State of Connecticut that flourished during the Industrial Revolution and included Victorian mansions, an open green area, botanical gardens, and a deer park;

(3) the residence of Samuel and Elizabeth Colt in Hartford, Connecticut, known as ''Armsmear'', is a national historic landmark, and the distinctive Colt factory is a prominent feature of the Hartford, Connecticut, skyline;

(4) the Colt legacy is not only about firearms, but also about industrial innovation and the development of technology that would change the way of life in the United States, including—

(A) the development of telegraph technology; and

(B) advancements in jet engine technology by Francis Pratt and Amos Whitney, who served as apprentices at Colt;

(5) Coltsville—

(A) set the standard for excellence during the Industrial Revolution; and

(B) continues to prove significant—

(i) as a place in which people of the United States can learn about that important period in history; and

(ii) by reason of the close proximity of Coltsville to the Mark Twain House, Trinity College, Old North Cemetery, and many historic homesteads and architecturally renowned buildings;

(6) in 1998, the National Park Service conducted a special resource reconnaissance study of the Connecticut River Valley to evaluate the significance of precision manufacturing sites; and

(7) the report on the study stated that—

(A) no other region of the United States contains an equal concentration of resources relating to the precision manufacturing theme that began with firearms production;

(B) properties relating to precision manufacturing encompass more than merely factories; and

(C) further study, which should be undertaken, may recommend inclusion of churches and other social institutions.

SEC. 3. STUDY.

(a) IN GENERAL.—Not later than 3 years after the date on which funds are made available to carry out this Act, the Secretary of the Interior (referred to in this Act as the ''Secretary'') shall complete a study of the site in the State of Connecticut commonly known as ''Coltsville'' to evaluate—

(1) the national significance of the site and surrounding area;

(2) the suitability and feasibility of designating the site and surrounding area as a unit of the National Park System; and

(3) the importance of the site to the history of precision manufacturing.

(b) APPLICABLE LAW.—The study required under subsection (a) shall be conducted in accordance with Public Law 91–383 (16 U.S.C. 1a–1 et seq.).

SEC. 4. REPORT.

Not later than 30 days after the date on which the study under section 3(a) is completed, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes—

(1) the findings of the study; and

(2) any conclusions and recommendations of the Secretary.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

REVISING THE BOUNDARY OF THE KALOKO-HONOKŌHAU NATIONAL HISTORICAL PARK

The bill (S. 254) to revise the boundary of the Kaloko-Honokōhau National Historical Park in the State of Hawaii, and for other purposes, was considered, ordered to a third reading, read the third time, and passed, as follows:

S. 254

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Kaloko-Honokōhau National Historical Park Addition Act of 2003''.

SEC. 2. ADDITIONS TO KALOKO–HONOKŌHAU NATIONAL HISTORICAL PARK.

Section 505(a) of Public Law 95–625 (16 U.S.C. 396d(a)) is amended—

(1) by striking ''(a) In order'' and inserting ''(a)(1) In order'';

(2) by striking ''1978,'' and all that follows and inserting ''1978.''; and

(3) by adding at the end the following new paragraphs:

''(2) The boundaries of the park are modified to include lands and interests therein comprised of Parcels 1 and 2 totaling 2.14 acres, identified as 'Tract A' on the map entitled 'Kaloko-Honokōhau National Historical Park Proposed Boundary Adjustment', numbered PWR (PISO) 466/82,043 and dated April 2002.

''(3) The maps referred to in this subsection shall be on file and available for public inspection in the appropriate offices of the National Park Service.''.

SEC. 3. AUTHORIZATIONS OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

REMEMBERING AND HONORING THE HEROIC LIVES OF ASTRONAUTS AIR FORCE LIEUTENANT COLONEL MICHAEL ANDERSON AND NAVY COMMANDER WILLIAM ''WILLIE'' MCCOOL

Mr. FRIST. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 73, submitted earlier today by Senators CANTWELL and MURRAY.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution, S. Res. 73, remembering and honoring the heroic lives of astronauts Air Force Lieutenant Colonel Michael Anderson and Navy Commander William ''Willie'' McCool.

Mr. REID. Madam President, I would like to be added as a cosponsor of the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent the resolution and preamble be agreed to en bloc, the motion to reconsider be laid on the table, and any statements relating to this measure be printed in the RECORD, without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 73) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 73

Whereas mankind lost 7 heroes with the tragic explosion of the Space Shuttle Columbia on February 1, 2003;

Whereas the families and friends of the 7 astronauts, the National Aeronautics and Space Administration, the entire Nation, and people around the world who followed the historic mission will deeply miss the 7 crew members of the Space Shuttle Columbia;

Whereas the astronauts made an important contribution as models of bravery, courage, and excellence for men, women, and children around the world;

Whereas 2 of these heroes, Air Force Lieutenant Colonel Michael Anderson and Navy Commander William ''Willie'' McCool, are particularly close to the hearts of residents of the State of Washington;

Whereas Lieutenant Colonel Anderson was a beloved son of the Spokane community since moving there at the age of 11, and a cherished hero for men, women, and children in Washington;

Whereas Lieutenant Colonel Anderson was a hero, long before accepting the challenge of the Columbia mission, for leading a life characterized by courage, achievement against many odds, and sacrifice for this country;

Whereas the story of Lieutenant Colonel Anderson is even more remarkable in light of the barriers to success that young African-Americans in this country have had to overcome;

Whereas this remarkable story has long been shared at the childhood church of Lieutenant Colonel Anderson and throughout the

Spokane African-American community, and has inspired a generation of children;

Whereas throughout his early education in Spokane area public schools, Lieutenant Colonel Anderson focused on voyaging to space as an astronaut and became an exceptional science student;

Whereas since becoming an astronaut in 1994, Lieutenant Colonel Anderson took to heart the special responsibility of serving as a role model for children around the country and back home;

Whereas after his 1998 flight on the Space Shuttle Endeavor to the Mir Space Station, Lieutenant Colonel Anderson returned to Cheney High School in Spokane and told a crowd of enthralled students that dreams such as his of becoming an astronaut can be achieved with hard work and clear goals;

Whereas Lieutenant Colonel Anderson embodied excellence and provided a triumphant example of accomplishment for Americans of all colors, races, and backgrounds;

Whereas the Washington family lost another dear friend in Commander McCool, who made Anacortes, Washington his home during 2 periods of service at Naval Air Station Whidbey Island;

Whereas community members remember Commander McCool for his kindness, professionalism, and love of his children;

Whereas Commander McCool continued to pay visits to the Anacortes community and was a cherished member of the community; and

Whereas Lieutenant Colonel Anderson and Navy Commander McCool will be missed but never forgotten: Now, therefore, be it

Resolved, That the Senate remembers and honors the heroic lives of astronauts Lieutenant Colonel Michael Anderson and Commander William McCool.

ORDERS FOR WEDNESDAY, MARCH 5, 2003

Mr. FRIST. Madam President, I ask unanimous consent when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Wednesday, March 5. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and that there then be a period of morning business until the hour of 11 a.m., with the time equally divided between the two leaders or their designees; provided further that at 11 a.m. the Senate then resume executive session and the consideration of the Estrada nomination; that the time until 12 noon be equally divided between the chairman and ranking member or their designees.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, I wonder if it would be helpful—unless I am reading this wrong—it would be helpful if either the majority or minority have the first 45 minutes of the morning business time; otherwise we have people waiting around trying to find out when to speak. We have no problem as to when we do it, either first or last, but if we can do that, that would be helpful.

Mr. FRIST. My understanding is you would have the first half and we would have the second half.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. For the information of all Senators, tomorrow there will be a period of morning business to allow Senators to introduce legislation and also to make statements. At 11 a.m. we will once again resume the Estrada nomination.

As a reminder to our colleagues, the cloture motion was filed on the Estrada nomination earlier this afternoon. That cloture vote will occur on Thursday morning and Members will be notified as soon as a specific time is locked in for the vote.

Under a previous unanimous consent agreement, the Senate will begin consideration of the Moscow Treaty at noon tomorrow. Relevant amendments are in order to the resolution of ratification, and therefore Senators should expect rollcall votes during tomorrow's session.

While I regret that such action had to be taken, in terms of the filing of cloture, I believe it is in the best interests of the Senate to move this process forward.

ADJOURNMENT UNTIL 9:30 A.M TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 5:26 p.m., adjourned until Wednesday, March 5, 2003, at 9:30 a.m.